United States Court of Appeals
for the Second Circuit

APPENDIX

77-1459

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In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,
Appellee,

-against-

IRVING GOLDMAN,
Defendant-Appellant.

From an Order of the United States District Court for the Southern District of New York.

APPENDIX FOR APPELLANT

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THE COURT: How about the stuff from Buffalo, did you get that?

MS. STRAUSS: I have no further news but the last information I have from Mr. Kraus is that they have nothing. But we will check that further.

THE COURT: I am talking about this agreement between the corporation and Zander.

MS. STRAUSS: That is on request and I don't know when that will be down. There is a good chance that the witnesses who we have waiting are going to go back to Buffalo and perhaps they can bring them back tomorrow morning.

MR. FRIEDMAN: The other records pertaining to this Robrian, I think I asked Mr. Kraus, there were other names who appeared, other people contacted, other people we would have contacted if we had known about this before trial to do our work.

MS. STRAUSS: We will run that down with every name on the document.

THE COURT: How long do you figure you can go with Mr. Zander today?

MR. FRIEDMAN: I have other things. I don't want you to think I am impeded by not being able to return to this. I have other things that will take me through this day surely. I do think --

THE COURT: We are going to take tomorrow off and you are going to get all of these documents down here by Thursday morning.

MS. STRAUSS: Very well, Judge.

THE COURT: That way you get a chance to look at them. The last thing a lawyer wants to do is get a document handed to him in court and he doesn't know what the heck it is.

MR. FRIEDMAN: I understand that. I want to say that we have talked about this I guess over lunch hour and I plan to make a presentation to your Honor of an inventory which is compendious of what it is that we think, as we sit now, the third or fourth day of the trial, I am losing track fast, what we have been denied, that is Brady material because while your Honor has had these applications that I have made in a kind of spastic fashion--

THE COURT: Neither one of us have been privy to the files over there. I don't know what is in them and you don't either.

MR. FRIEDMAN: What we are talking about, as I understand it, is that some people are at pains not to create files yet they have material told to them which would qualify as Brady material.

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What I am saying to your Honor is, putting aside the questions of law involved in that, I think the Court ought to have, and I am going to try to have it ready for the next time we see your Honor after this afternoon, a list of everything that we now know, I emphasize the word now, that we should have had two months in advance of trial and that we haven't gotten until the trial began.

THE COURT: Okay.

MR. FRIEDMAN: I do plan to ask him just to go back for a minute on the date of surrender.

THE COURT: Absolutely.

(In open court, jury present.)

JACK ZANDER, resumed the stand,

and testified further as follows:

(At the side bar.)

MR. FRIEDMAN: At the risk of appearing ungracious, I think that what you propose or what you suggest imposes a certain jeopardy of prejudice to the defendant. By that I mean we have a day and we have a day presumably to try to deal with whatever is brought in. The jury doesn't know why a day is taken. The jury just knows it is another day of trial and I think, if your Honor please --

THE COURT: There is not going to be any trial tomorrow.

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MR. FRIEDMAN: It is left to the jury to wonder why.

THE COURT: I will tell them.

MR. FRIEDMAN: In terms of what actually causes this?

THE COURT: No. I will tell them a white lie.

MR. FRIEDMAN: Your Honor will do as you think.

THE COURT: Nothing wrong with telling them a white lie.

MR. FRIEDMAN: I think there is an alternative and that is we should have the opportunity to see these things and let them go forward with their case and let Zander be subject to recall or something like that. I just am very fearful --

THE COURT: If it turns out to be a volume of material you are going to have him subject to recall. Don't worry about that.

MR. FRIEDMAN: I don't think a day's time or a half day's time cures what the government has done to us here. I don't want anything that I say or not say to be construed as my agreement that it does.

THE COURT: Absolutely not. You still have a complete objection to the entire procedure and it should be clear on the record.

MR. FRIEDMAN: I am fearful doing it this way -- and your Honor is motivated by the best reasons in the world so far as the production of documents -- I am fearful nevertheless that the result will work for the prejudice of the defendant for no reason having to do with the defendant. Whatever moves your Honor to do what your Honor proposes to do is caused by the government and not the defendant.

THE COURT: Okay.

MR. FRIEDMAN: I just wanted -- I was not fast enough inside. As soon as we came out I did talk about it and we did want to think about the ramifications of what your Honor suggested and we perceive that as a difficulty. For example, if Mr. Lockwood, if that is his name or Mr. Weinstein, if that is his name, or Mr. Solomon, whatever the names are that have surfaced, if I wanted from something I saw either today for the first time or tomorrow for the first time to go and talk to somebody and do trial preparation that I should have had an opportunity to do,your Honor's suggestion will not afford me the opportunity. I will be as far behind the 8t or 18th ball as I was when this first was shown to me.

I don't want anybody to suggest that I am agreeing that now that prejudice is erased by what the government did.

THE COURT: We are in no way suggesting that.

MS. STRAUSS: If Mr. Friedman has any further requests --

THE COURT: He is going to put together a compendium of things that he thinks he should have had.

MS. STRAUSS: If he would want to interview anyone and we can be of assistance in making the person available we will be happy to do that.

I want for the record to say I think it is clear we do not, even though we are now of course trying to do whatever we can to assist in obtaining whatever documents Mr. Friedman is asking for, we do not concede there has been any problem under Brady in this matter.

Furthermore, I want to point out for the record that Mr. Zander did testify on Friday as to Robrian Corporation and the fact that he has a safe deposit box. I don't think at that time Mr. Friedman made any request of me or put out any subpoenaes or made any attempt at that time to obtain any documents. I want that clear on the record.

MR. FRIEDMAN: May I just say this: If my memory isn't totally deserting me on this day, when he testified on direct he didn't say a word about the name of the company. I believe that is right. If I am wrong the record will show that I am wrong.

THE COURT: All right, don't worry about it.

(In open court.)

CROSS EXAMINATION CONTINUED

BY MR. FRIEDMAN:

Q Did you ever tell anybody from the government, the federal government, about Mr. Altman or the Glen Park Casino arrangement, Mr. Zander?

A No.

Q Did you ever tell Mr. Hollman about it?

A I believe I told him about it at the same time as I told Ms. Strauss. I believe he was present at the time.

Q I asked you just now, did you ever tell anybody from the federal government about Altman and the Glen Park Casino? Did you tell Ms. Strauss about it?

A Yes.

Q When?

A In the last couple of weeks. I didn't understand. I thought you meant the federal tax government or something. I didn't understand your question.

Q Let's be clear because I want this to be clear. Is it the fact that you told Ms. Strauss about the Altman-

Glen Park Casino, $30,000 cash gift, something in the order of at least two weeks ago?

A Yes.

Q Is it the fact that Mr. Lippe was present at the same time?

A I am not sure if he was present at the time because he was in and out.

Q Was Mr. Hollman present at that time?

A I believe he was.

Q Was this one of the daytime meetings that you had early in August with Ms. Strauss?

A I believe it was.

Q Did she ask you whether there were any papers connected with this?

A I don't recall.

Q Over the luncheon recess, Mr. Zander, there has been produced for us by the government the documents which I now hand you --

MS. STRAUSS: Objection to that. Defense counsel is trying to put before the jury a misimpression as to how those documents came in.

THE COURT: They were given to him by the government. The government is required at times to turn over documents to the defense.

Q It has been marked Exhibit B for identification. Can you tell me what those documents are?

A Yes.

Q Tell me what they are, please.

A They are the document that was necessary in order to open up the safe deposit box.

Q For Robrian Corporation at a bank in New York, right?

A Yes.

Q And your signature appears on the document?

A Yes.

Q Can you tell me what else you have before you?

A I have a card, it is not identified as an exhibit -- I have a card which shows the signatures of myself and Doris Chasen.

Q Is it your signature?

A Yes.

THE COURT: That comes from the bank, is that correct, sir?

THE WITNESS: Yes.

THE COURT: And that is the bank where you had the safe deposit box, is that correct, sir?

THE WITNESS: Yes.

THE COURT: And those signatures are the ones that the bank kept to compare with someone coming in to go into the safe deposit box, is that correct?

THE WITNESS: Yes.

MR. FRIEDMAN: I offer Exhibit B, if your Honor please.

MS. STRAUSS: No objection.

(Defendant's Exhibit B received in evidence.)

xx

Q Mr. Zander, I draw your attention to the so-called corporate resolution covering rental of an access to safe deposit box and I ask you whether that is the signature of Louis Z. Almasi on it?

A Yes, it is.

Q And that is the same Almasi who was your co-worker in Buffalo, is that right?

A Yes.

Q I want to call your attention to the card, the signature card, Mr. Zander. Do you see the words, stamped words, "Surrendered August 26, 1975"?

A Yes.

Q You dissolved Robrian Corporation in 1970, didn't you?

A Yes.

Q Is it the fact that despite the fact that you dissolved the corporation in 1970, you kept this corporate safe deposit box in the Port Authority branch of the First National City Bank in New York until August 1975?

A Yes.

Q And you paid an annual fee or rental for that box?

A Yes.

Q And you used --

MS. STRAUSS: May we have the examination conducted from the podium instead of on top of the witness?

THE COURT: Sure, it doesn't matter.

Go ahead.

Q And you used the box in the interim?

A Yes.

Q Mr. Zander, you mentioned something in your direct testimony about having heard Mr. Goldman say, I think you said a Mr. Wasserberger, that he, Goldman, had an interest in a Sportservice operation at the Worlds Fair and that that was not true, do I have that right?

A No. Mr. Goldman had an interest in the operation of the Worlds Fair -- I'm sorry.

Q I will try to make my question clearer.

There was testimony --

MS. STRAUSS: May we have the reference to the testimony, the page?

THE COURT: I don't have it out myself.

MS. STRAUSS: I am asking defense counsel since he is referring to it.

THE COURT: Do you know where it is?

MR. FRIEDMAN: If your Honor please, the genesis of it is on page 100, a question on line 7.

THE COURT: Let me see it.

Go ahead.

Q Let me rephrase it, Mr. Zander.

MS. STRAUSS: I don't see the further suggestion that he said that was not true. I think that refers to Interborough News at page 101.

THE COURT: I am not sure it does. See if you can't clear it up.

Q Mr. Zander, did Mr. Goldman in your presence ever tell Wasserberger that he had an interest in a Sportservice operation at the Worlds Fair?

A I don't recall. Yes, I believe he did. Yes. I believe in the course of discussions he indicated that he was some type of participant in the concession in the operation they had either as landlord, in other words, we paid a percentage, as I have indicated,to a company called, I think it was Hegman & Harris, and

Mr. Goldman had some -- I don't know what interest he had in it but he had some interest in it. That was in 1964.

In 1965 in addition to that International Plaza, where we were strictly the tenant, there was another operation a restaurant type operation in which he, I believe, had an interest. I don't know to what extent but he, I believe, had a financial interest of some type in that. It was a restaurant of some kind.

Q Let's see if we can't follow that out.

Number one, the first reference you make is to a relationship that your company, Sportservice, had to a company in which Goldman had an interest, in which Goldman's company or the company in which he was interested was the landlord and your company, Sportservice, was the tenant, is that right?

A Yes.

Q And that had something to do, you say, with International Plaza at the Worlds Fair?

A Something with a complex of International Plaza.

Q You mentioned something else where you say that in 1965 Goldman got an interest in something which you people operated? What is that?

A The fair ran for two years. The first year the only interest that I am aware of that Mr. Goldman had was in this International Plaza as landlord or as a portion of landlord. I don't know to what extent his financia interest actually was.

Q But he was not your partner in that arrangement, he was simply a landlord?

A That is correct.

Q I am interested now in a venture or arrangement or dealing where Goldman was your partner or your associate or your co-venturer, something like that.

A There was such a venture in 1965 at the Worlds Fair.

Q What was that?

A It was some type of restaurant, a fast service restaurant. I don't recall the name of it but I do know of at least one that I understand he was a participant of.

THE COURT: Where was this at the fair?

THE WITNESS: It was on the premises of the fair. I don't remember if it was called -- it may have been Austrian Pavilion or some such thing but I just don't remember the name.

Q Let's assume it was Austrian Pavilion, but it was something at the Worlds Fair?

A Yes.

Q And somebody from Sportservice worked out some kind of arrangement under which Mr. Goldman had an ownership participation in the operation of that pavilion?

A It wasn't actually worked out. I believe it was worked out with a corporation and I believe he was some participant of that corporation.

Q He owned a part of the corporation?

A I don't know his participation.

Q Whether you know how much, nevertheless you understand that he had some interest in the corporation, right?

A He had some interest. I don't know if it was an ownership interest or what interest.

Q And your company had another interest in the corporation, right?

A Yes.

Q And who made this arrangement for your company?

A I don't recall. I just don't remember.

Q It wasn't you?

A I don't believe so.

Q Was it Louis Jacobs?

A I don't know. I know we looked over the premises once. I think Louis Jacobs I know was there one time and

I think they showed -- no, that would have been after that. I just am not sure. It is very hazy. I know that they at one point showed the area because it had been something else before that was unsuccessful and I believe the person that had recommended that as being a good possible site, the person we primarily dealt with was Mr. Kagan.

Q Did he have an interest in this operation or venture?

A Yes.

Q He too?

A Yes.

Q Anybody else?

A I don't know. We primarily dealt with Mr. Kagan.

Q Do you know what the respective interests were?

A It was some type of participation arrangement but I don't remember what it was.

Q Goldman had a certain percentage, did he not, in any profits that might accrue from the operation of this enterprise?

A I do not know that.

Q I am not asking whether you know the specific percentage.

A I don't know what arrangements Mr. Goldman had because we were dealing primarily with Mr. Kagan.

(Defendant's Exhibit C marked for identification.)

xx

THE COURT: Could you be more specific as to where this place was rented at the fair?

THE WITNESS: Only that it was on the Worlds Fair premises. Its location I just don't know as such. It was in the actual premises. I don't know if it was the eastern part, the western part.

THE COURT: All right.

Q Would you look at those two sheets of paper that have been marked Exhibit C for identification and tell me whether your signature appears on the letter?

A Yes.

Q And is the top sheet of the paper, which is attached to it, a Sportservice remittance advice form?

A Yes.

Q And does it relate to the same subject matter as your letter?

A Yes.

Q Do you have a recollection now whether that has something to do with the Worlds Fair?

A Yes.

Q Does it?

A Yes.

MR. FRIEDMAN: I offer the document, if your Honor please.

MS. STRAUSS: No objection.

(Defendant's Exhibit C received in evidence.) xx

(Continued on the next page.)

THE COURT: This refers to a place called Steak Town Fair.

THE WITNESS: I believe it refers to both Steak Town and Austrian.

THE COURT: I know. Where was Steak Town?

THE WITNESS: I know -- it was in the World's Fair. There were a number of entrances and Steak Town was near one of the entrances. That is about the only thing I can recollect of Steak Town.

MR. FRIEDMAN: May I read this letter to the jury?

THE COURT: Sure.

(Defendant's Exhibit C in evidence was read to the jury by Mr. Friedman.)

Q Now that I have read that, and it is signed Very truly yours, Sportservice Corporation by J. Zander, signed Jack.

Does that refresh your recollection that as early as 1975 your corporation was in some kind of arrangement with Goldman where he was a 25 percent participant in profits with respect at least to the Austrian Pavillion and Steak Town?

MS. STRAUSS: I object on the grounds that the witness didn't say he had forgotten any such thing.

THE COURT: He said he didn't know. That is enough. Go ahead.

Q Does it refresh your recolledtion?

A It doesn't refresh my recollection. It would indicate such but it doesn't refresh my recollection.

Q As a matter of fact, Mr. Zander, there were several enterprises or prospective enterprises in which Mr. Goldman was either a partner or venturer or profit participant with your company in 1964, '5, '6, '7, '8, isn't that so?

A You mean outside of the World's Fair or just yes or no?

Q In general. Outside of the World's Fair, in the World's Fair, outside of Jola, in Jola, weren't there a number of enterprises in which your company was either a partner of Mr. Goldman or a joint venturer or a co-venturer in that period of time either actually or prospectively?

A There was one additional one, I don't recall when it started. I don't know -- you say years through '68 and I am not sure when the one I have reference to started.

Q What is the name?

A Pelham Bay Golf Course.

Q Incidentally, this business about Austrian Pavillion and that Steak place, that was something that was done perfectly above board, wasn't it?

A Yes.

Q That was legitimate?

A Yes.

Q It was honest?

A Yes.

Q Reflected on the corporate books and records?

A Yes.

Q And all of management knew it, right?

A Yes.

Q You mentioned Pelham Bay, and let us talk about that.

That is sometimes known as Split Rock?

A Yes.

Q That has something to do with a concession at a city park golf course?

A Yes.

Q The Split Rock Golf Course?

A I am not sure what it was called. It was a golf course.

Q When did that happen?

A I am not sure. It may have been 1968 or '69, some such time.

Q Tell me what you remember about your company's relationship with Goldman in connection with Split Rock Golf Course or anything having to do with that or Pelham Bay, however you describe it.

A Mr. Goldman had told me -- I don't remember if it was a phone call or while I was in New York, but at a point he indicated that he thought he could obtain for us Split Rock and he told me what it was. I wasn't greatly interested because when I learned of its --

MR. FRIEDMAN: If your Honor please, I don't care to have the operation of the man's mind. I just want to know what happened.

Q Mr. Goldman brought it to your attention?

A Yes.

Q As something that could be obtained as a concession at the Split Rock Golf Course?

A Yes.

Q A good concession?

A Yes.

Q Did that, by the way, have anything to do with material or equipment or furnishings that you people had left over from the World's Fair?

A I don't believe so.

Q When Mr. Goldman told you what he thought about the availability of this concession, did you have some discussion about whether you would be interested, just yes or no?

A I was only very minorly interested.

Q Did he say anything to you about whether if you decided to go forward he thought he was entitled to have a share of the operation?

A I believe so.

Q Did he say that because he had brought it to your attention and in effect found the deal that he should have a share of the profits?

A I don't remember what his reasons were or what reasons he gave.

Q But there was a reason given, wasn't there?

A I don't remember if there was a reason given.

Q All right. Did there come a time when you decided to go forward with it?

A Yes.

Q And you obtained the concession?

A Yes.

Q In whose name did you obtain the concession?

A New York Sportservice, Inc.

Q New York Sportservice, Inc. got a concession from whom?

A From the Parks Department.

Q From the City of New York by the Parks Department, right?

A Yes.

Q And it was to be a licensee of this concession, is that right? That is to say New York Sportservice?

A Yes.

Q And so far as could be seen then New York Sportservice was the one that was going to operate and get whatever profit there was from this concession, is that right?

A Yes.

Q Well, did New York Sportservice keep all of the profits of this concession?

A No.

Q Did it share them with somebody?

A Yes.

Q With whom?

A It shared them with Mr. Goldman and a Mrs. Kwoh.

Q Before you did that did you speak to Mr. Jacobs, the late Mr. Jacobs to see whether that was okay, to take this license which New York Sportservice, the corporation got from the city, and share the profits with either Mr. Goldman or Mrs. Kwoh?

A I don't recall.

Q But in fact you do recall that you shared the profits, right?

A Yes, I recall it.

MR. FRIEDMAN: If your Honor please, may we have marked as Exhibit D for identification two separate documents both of which are purportedly agreements.

xx (Defendant Exhibit D was marked for identification.)

THE COURT: What do you want done with them now?

MR. FRIEDMAN: I want to show them to the witness.

THE COURT: Okay.

Q Mr. Zander, would you take a look at those two documents and tell me whether you can identify them?

A Yes.

Q What is the top document?

A The top document, Exhibit D, is the agreement between New York Sportservice and the Commissioner of Parks.

Q And who signed for New York Spor[illegible]vice?

A J. Sorg as assistant secretary.

Q S-o-r-g, right?

A Yes.

Q He was an officer of New York Sportservice, right?

A She.

Q And she was somebody that you knew?

A Yes.

Q And did you ask h[illegible] to sign that agreement on behalf of New York Sportservice?

A No, that would have been asked of the person making up the document normally.

Q And who made up the document, do you know?

A One of the attorneys in our office.

Q Go, if you will, to the second document which is two pages in length, I believe.

A Yes.

Q Can you identify that document?

A This is an agreement between New York Sportservice, Mr. Goldman and Emily Kwoh.

Q Who signed it on behalf of New York Sportservices?

A J. Sorg.

MR. FRIEDMAN: If your Honor please, I offer both those elements of that Exhibit D into evidence.

THE COURT: Any objection?

MS. STRAUSS: I think not, your Honor. I just want to confer with counsel.

No objection.

(Defendant's Exhibit D was received in evidence.)

xx

MR. FRIEDMAN: May I read just portions of these documents to the jury?

THE COURT: Sure.

MR. FRIEDMAN: In the first exhibit dated the 8th day of February 1967 between the City of New York, skipping some words, acting by Thomas P. Hoving as Commissioner of Parks of the City of New York hereinafter referred to as Commissioner and New York Sportservice, Inc., a domestic corporation with principal offices at 703 Main Street, Buffalo, New York, referred to as licensee, and we come to a second section on the first page called Grant and Description of License and it says "Commissioner hereby grants to licensee and licensee hereby accepts from Commissioner a license to operate on property of City under the jurisdiction of the Department of Parks and then describes a concession consisting of a lunch bar, dining space, refreshment stands, kitchen and storage space for preparation of food stuffs, beverages including beer, ice cream, candies, tobacco products and all other articles usually sold at refreshment stands and food bars and such other facilities as Commissioner may direct."

There is a reference to location and the reference of location it says the license shall be operated in the Borough of the Bronx, City of New York in the area and/or buildings described as follows:

Park: Pelham Split Rock Golf Course, Bronx, facilities, the golf clubhouse, Pelham stand, Split Rock stand.

Then if you turn, and I am turning,over to the last page of the agreement you will see that it is signed Tomas P.F. Hoving as Commissioner of Parks by the City of New York by a man named Alexander Weirn, signed New York Sportservice, Inc. licensee by J. Sorg, Assistant Secretary.

The next page of the document is an affidavit and I am going to read you part of that.

"State of New York, County of Erie.
J. Sorg, being duly sworn, deposes and says that he is an Assistant Secretary of New York Sportservice, Inc. and a member of the board of directors. That the names and

addresses of the president, secretary and treasurer of said corporation are as follows: President, Secretary and Treasurer of said corporation are as follows: President, Louis M. Jacobs,"giving his address. "Second, J.M. Jacobs," giving a different address. "T easurer, Louis M. Jacobs", giving the same address as was given for him when he was listed as president.

If I may turn then to the second document which is part of Exhibit D, I would like to read this in its entirety.

(Defendant Exhibit D in evidence was read to the jury by Mr. Friedman.

Q Mr. Zander, there is no doubt in your mind that as a result of the second agreement which I read in its entirety Mr. Goldman had a one-third interest in Sportservice's operations at Split Rock, is that right?

A Yes.

Q Did he put up any money for that interest?

A No.

Q Did he perform any services for that interest in an ongoing day-to-day operational way?

A No. Not to my knowledge.

Q Was his acquisition of that interest unlawful?

A No, not to my knowledge.

Q Have you ever said to anybody that the fact that Mr. Goldman had that interest in a Sportservice license was some kind of a piece of fraud on Sportservice?

A No.

MS. STRAUSS: I object to asking the witness' opinion on these things.

THE COURT: Yes, he is not a lawyer.

Q Was the fact that Mr. Goldman had an interest in the Split Rock operation or an interest in your licenses' profits, was that generally known throughout Buffalo headquarters of Sportservice?

A Not particularly, only to those that would have been involved.

Q Tell me who they would be.

A That would be the person that drew up the profit and loss statement, the person that drew up the remittance, the profit and remittances there would be.

Q The people who drew up the profit and loss statement, that is accounting department, right?

THE COURT: Sportservices.

THE WITNESS: Yes.

Q Your controller's department, right, Sportservice's controller's department, right?

A This particular operation I know was handled differently from the normal operations.

Q Differently? Let me ask you a question. Were there annual statements of profit and loss drawn up so that each of the participants, that is to say Kwoh, Goldman and New York Sportservice would know what the division of profits was?

A I know of one that was drawn up.

Q By whom was it drawn up? Somebody who worked for Sportservice?

A Yes.

Q So there was a Sportservice employee who drew up a piece of paper, it was an annual statement of operations, and on that piece of paper it was indicated right on the very face that one-third beloned to Goldman, one-third belonged to Kwoh and one-third belonged to New York Sportservice, is that right?

A Yes.

Q So that department knew or had reason to know what the interests were, is that right?

A Yes.

Q Now the agreement that I read to you, that March 15, 1967 agreement between New York Sportservice, Goldman and Kwoh, that was prepared in your legal department?

A Yes.

Q So there was another arm of this enterprise that knew that Goldman had an interest in something that otherwise nominally was in the name of or belonged to New York Sportservice, is that right?

A Yes.

MR. FRIEDMAN: I have marked as Exhibit E for identification this single sheet.

x

(Defendant's Exhibit E was marked for identification.)

Q Mr. Zander, I show you Defendant's Exhibit E for identification. It is a Xerox copy of something but can you tell me what it is?

A It is an inter-office discontinuance notice of Pelham Split Rock.

Q Is it a New York Sportservice or a Sportservice form?

A Yes.

Q It is a method by which people in your organization communicate information to people who need to know,is that right?

A Yes.

Q Does it have a special name?

A Pardon?

Q Does that kind of document have a special name?

A It is called a discontinuance notice.

Q Is a discontinuance of what?

A An agreement.

Q That is what that notice is, is that right?

A Yes.

MR. FRIEDMAN: I offer it in evidence.

MS. STRAUSS: No objection.

xxx (Defendant Exhibit E was received in evidence.)

MR. FRIEDMAN: I would like to read portions of that to the jury.

THE COURT: Go ahead.

(Portions of Defendant's Exhibit E in evidence was read to the jury by Mr. Friedman.)

Q I count quickly 50 or 51 different recipients of that notice.

Mr. Zander, are all of those poeple who are listed on top as recipients of that notice people who had something to do with or knowledge or acquaintance or relationship to the Split Rock Pelham concession operation?

A No.

Q Tell me which ones of those 51 did.

A I couldn't tell you which ones did. But I know all of them did not.

Q Did some have some relationship to it?

A Some did.

Q Tell me which ones you can tell me had relationship to it.

A I could tell you easier those that didn't.

Q Tell it to me any way you want so long as we come down to a point where there is a residue of those that did.

A Many, I am not sure but the ones I am sure wouldn't have anything to do or would have to have knowledge of it would be D. Chasen, Geckler, Whaley. Those are the only ones I am sure. Many of these names, I am not sure I know the people.

Q Those are the only ones on the list of some 51 indicated recipients that you are sure had nothing to do with it, is that right?

A Yes.

Q And on that list you find the name Max Jacobs, right?

A Yes.

Q You find the name J. Jacobs?

A Yes.

MR. FRIEDMAN: May I pass that through the jury box?

THE COURT: Sure.

(Continued on next page.)

MR. FRIEDMAN: May we have this marked as Exhibit F for identification.

(Defendant's Exhibit F marked for identification.)

xx

THE COURT: All right, ladies and gentlemen, we will take our afternoon break now.

Will everybody else please remain seated.

(Jury left courtroom.)

THE COURT: We have been referring to Exhibit D as two documents. The official Exhibit D is three documents. There is a letter dated May 2, 1973 at the end of it.

MR. FRIEDMAN: That was not intended and I tried to describe what I handed up. May I remove the letter?

THE COURT: Yes. And for purposes of completeness of the record there are two concessions, Pelham Bay and Split Rock.

(Robing room conference.)

MR. FRIEDMAN: I want to make another application to your Honor. In the course of this afternoon's cross examination of Mr. Zander I asked him when or whether he had told the government about this Glen Park event and Altman and the payment of $30,000 and he says he had. He says he told it to the government in early August.

This is another piece of Brady material by any standard and I think that for us to find out about Mr. Altman and about this amusement park on the fifth or sixth day of trial is an absolute outrage. It is an absolute defiance of your Honor's order that Brady material be turned over to us and while I am assuming that the government didn't know about it on June 27th, and I will further assume the government didn't know about it and at first made its Brady material production on July 25th, surely at the point of time when they knew this and were told this they had an obligation to deliver it to us and they did not.

I renew on that basis. It is a further piece of defiance and I renew the motion to dismiss.

We are prejudiced by trying to get ready for trial while learning things during the trial, things we should have been told about in advance of trial substantially.

MS. STRAUSS: Your Honor, when I learned about this information I questioned Mr. Zander about it as best I could. I don't think there are any documents to be obtained. I certainly don't have any with respect to this and I certainly did not and do not view it as Brady material.

The man says that he received $30,000 as a gift. He does not describe any circumstances of his conduct in relation to it. There has been no investigation in connection with it.

He ultimately paid taxes on it, something that defense counsel has not as yet elicited but he did ultimately pay taxes on it. There was no question of the Internal Revenue Service referring to it as a fraud. He has not any problem with the fee concerned and he is subject to investigation or if there is anything that might come out of it but for the fact that he received $30,000 from this man, Mr. Altman who is now dead.

I don't know whether you elicited that.

THE COURT: He is dead?

MS. STRAUSS: Yes, your Honor, he died a few years ago. I am not certain frankly if it would necessarily be good cross examination. Your Honor has been very generous with Mr. Friedman in letting him pursue anything he wanted to pursue. It would certainly be argument that it wasn't even properly subject to cross examination in connection with this man's testimony in this case. I don't think we have any apology to offer. I don't think it was Brady and I don't think so now.

MR. FRIEDMAN: If your Honor please, I regard it as incredible that somebody suggests that because there was no investigation and this is Ms. Strauss talking, because there is no investigation that makes it nonetheless or the less Brady material.

Number two, the witness, when I asked him specifically, he said he paid no taxes. If you say he paid taxes you know something that I don't know and it is certainly not on the record of this court.

Number three, you have here a man who testified this morning and you knew about it sometime in early August that there was another situation where with respect to the business of his employer he took $30,000 which he characterized as "a gift" and it was from somebody who had business relations with his employer and he says that in this case he told his employer about it and his employer, because the employer theoretically would have been able to say, look whatever comes to you -- and this is the government's argument -- whatever comes to you because of your corporate status, Mr. Zander, I claim that I want. I am entitled to whatever you get in connection with corporate business and here was a case in which Mr. Zander testifies that he went to Mr. Jacobs and Mr. Jacobs said God bless, if you can get $30,000 by all means take it and have it and that is the substance of it.

I say, your Honor, it doesn't take my fertile imagination if it be fertile, it doesn't take anybody's imagination any time at all to say that is exculpatory of the defendant with respect to assertions here that this same man Zander got an interest he says for Mr. Goldman in a company and that he didn't tell his employer about it as if that would have made a difference if he had or had not in any event. To try to gloss that by saying that your Honor has been very liberal with me in allowing me extensive cross, that is not gloss at all.

In the first place there has been no objection and I dare say if there had been an objection I believe it would have been overruled instantly.

This is not only pertinent and material but it is plainly exculpatory and we plainly ought to have had it.

MS. STRAUSS: So the record is clear I would like to have it on the record that I did not know from Mr. Zander that he got approval from Mr. Jacobs. This is something that I did not hear until he said it on the stand. But I would reiterate, your Honor, I know it is reiteration, we evaluated him from the point of view of whether there had been misconduct or any possibility that the fact this happened would give him a motive in this case to lie, whether he felt that this could become the subject of an investigation or anything like that.

As to his paying taxes, Mr. Friedman, let me explain. I think you asked him in relation to that point in time when he received the money did he then pay taxes and his answer was no, he considered it a gift. I think you did not pursue that with him. I think if you did you would learn he subsequently did pay taxes on it.

MR. FRIEDMAN: Then if he paid taxes on it and you knew he was treating it as income then it was income that he was receiving by reason of his relationship to somebody who was managing for a share of profits a Sportservice owned enterprise and it is something which is so parallel at least in outline to what the government is talking about that whether or not it was alleged that Louis Jacobs did or did not approve,here is a man who says that in one shot he got $30,000 in relation to his employer's business and if that kind of a tendency --

MS. STRAUSS: It doesn't say that.

THE COURT: That is an argument to be made.

I will reserve on it.

I was associated with the firm which was counsel for the Worlds Fair. I never met Goldman. This is the first time I heard anything about the Worlds Fair. I was an associate with that firm. What do you want me to do?

MR. FRIEDMAN: Nothing you can do now.

(Recess.)

(In open court, jury not present.)

THE COURT: Mr. Goldman, do you ever remember meeting me in any situation other than in this courtroom or this courthouse?

MR. GOLDMAN: No, your Honor, the first time is when I saw you on the bench.

THE COURT: I don't remember meeting you either. I told you before that I was an associate with the firm that represented the Worlds Fair -- and I had called about this and asked you to check -- a case called International City against the New York Worlds Fair Corporation which apparently I handled and according to the partner in charge of it it is his recollection that the principals of International City were one Irving Goldman and one Arnold Kagan. The case was settled and that is all there was to it.

MR. GOLDMAN: I was never there, your Honor, or any place like that.

THE COURT: I never remember meeting you at all. I just wanted to be sure that you know about it. Do you have any objection to our continuing?

MR. FRIEDMAN: No, your Honor, I don't.

(Robing room conference.)

MS. STRAUSS: I just wanted to amplify a little bit the background of the decision that was made on the Altman matter with respect to it being Brady or not being Brady. I reviewed the matter with three of my associates in my office. Everyone came to the conclusion it was not Brady and our thinking was in this respect it was not clearly a conviction or an act of misconduct nor was it something that would give a man a motive to lie and his being subject to investigation or an indictment as a result of his acts. That is an interpretation that we give to Brady and that is the way we apply it.

I have to say under United States against Agers I think the Supreme Court recently made it clear that it is not sufficient for a defense counsel simply to repeatedly say Brady material without them having some concept of what it has to do with the case and viewing the facts and without being specific about what they need and particularly I would say with respect to the Robrian matter I don't think defense counsel is in a position to claim surprise and lack of an ability to meet this today, when I was given really no notice before trial. I was not even given discovery before trial to alert me to the fact that what they would now be emphasizing is the lack of knowledge on the -- that Sportservice, their claim apparently had knowledge of the entire fraud here. I had no way of knowing that that is where the defense was going. Therefore when I reviewed the documents that Mr. Zander gave me they seemed to have no content as far as I saw them beyond the fact that they indicated he did form a corporation and dissolved it without being in business as the direct testimony indicated.

If upon his testifying on Friday when defense counsel learned there was such a corporation at that point whether they knew the name or not they had to be aware that there had been some corporate documents.

Again, I received no request that would have caused me then to turn over the documents. I would have been happy to do so really at any time because we intended to elicit this. I don't see either of these as being matters of any kind of substantial concern under Brady versus Maryland. Just because we were trying to meet your Honor's dealines and send agents around to get these things I did not want to appear as though we acquiesced in the nefarious past that Mr. Friedman puts on these particular things.

MR. FRIEDMAN: Would you hear me on this, your Honor?

THE COURT: Didn't I hear you before?

MR. FRIEDMAN: We have some new things now and I would like to respond. In the first place if Ms. Strauss is saying to your Honor and to me that this particular revelation which she got wasn't going to be satisfied by her own response but she thought sufficient question raised to ask three other people then at least we come to a level which we are now told where it was doubtful.

And I suppose that the least Ms. Strauss could have done under those circumstances by her own standards would be to say well, if I have a doubt I ought to at least submit this material to the Court and let the Court decide whether it has that kind of content.

And she didn't do that. Not so far as I know --

THE COURT: Not as far as I was around.

MR. FRIEDMAN: And she says unless the material reflects badly or adversely upon the witness' character it doesn't come into the realm of Brady material. I don't agree with that for one moment. If it is material which a witness states and comes to the attention of the government which is exculpatory of any element of the charge which is laid against the defendant, therefore whether it reflects badly upon the witness as a matter of character or not is absolutely irrelevant and this material, as I have explained to your Honor before, and

I shall not repeat, clearly comes within that category.

Your Honor, if it were one thing that we have had, all right, perhaps somebody could have made a mistake. If it was two things, maybe we made a mistake. But you know, if your Honor please, we sat with the government sitting on the statement -- I am talking about things in writing which were delivered to us at the beginning of the trial, in which for example witnesses Zander and Lynch either in grand jury testimony or in statements recorded by government operators said that Goldman was entitled to what he got in Jola, that Goldman was owed, where it was said by Lynch that originally he was told to give all new candy deals -- originally is the word I want to stress because that is Mr. Lippe's writing -- originally he was told to give all new candy deals to Goldman and where beyond that I believe it was Zander who said in this very same testimony that when the Jola deal was made, when the Jola arrangement was made he coordinated that with his management.

All of that material, Judge, whether you call it 3500 material, and it is clearly 3500 material is equally obviously and without any question Brady material and that material, Judge, we didn't get either. That material, you can't say you learned about that just in August.

That material has been in the government's hands since February of 1975.

We have a record here, Judge, which is beyond belief of all of this material which should have been turned over to us which has not been turned over to us and it isn't just what they had two and a half years ago but the process has continued to this very day and it continues in the face of our continued attempts to get them to disgorge and they have refused to disgorge.

Your Honor remembers the only thing we got a month late, but we got, was the Rosedale rap sheet and even as to that they came into your Honor and said, please don't let us talk about that in the trial.

This is not the kind of position, if your Honor please, that the United States Government should be in when its obligation is to do justice. This is the kind of position that somebody is in who wants to win at any cost even if it means defiance of the Court's order. They don't have any better right to defy the Court's orders than I do.

THE COURT: I am still reserving decision.

(In open court, jury present.)

BY MR. FRIEDMAN:

Q Mr. Zander, you remember that the Split Rock agreement was made in 1967. My question to you is before that agreement was arranged for, before you understood that your company was going to get that concession did you meet Mr. Hoving, Commissioner Hoving?

A I don't believe so. I don't remember ever meeting Commissioner Hoving.

Q Did you ever go to see anybody to talk about the possibility of obtaining that concession for your company?

A I don't remember talking to anybody.

Q Did you ever go to a building called the Arsenal Building in Central Park?

A I don't recall it.

Q I want to show you this document, Exhibit F for identification, and ask you if you have ever seen this or a copy of it before?

A I don't remember the document.

Q Excuse me?

A I don't remember the document.

Q Do you remember any of the events referred to in the document?

A No, I don't.

Q Did there come a time, Mr. Zander, when you and Mr. Goldman gave some attention to the question of whether or not you might be able to arrange to become the concessionaire at the Atlanta Basball Park?

A I don't recall any specific discussion.

MR. FRIEDMAN: I will ask the clerk to mark as the next Defendant's Exhibits two letters together, one dated December 4, 1964 and one February 1, 1965.

xx (Defendant's Exhibits G marked for identification.)

Q Mr. Zander, would you take a look at those two letters and tell me whether that is your signature that appears on each of them?

A Yes, it is.

MR. FRIEDMAN: I offer those letters in evidence.

MS. STRAUSS: No objection, your Honor.

xx (Defendant's Exhibit G received in evidence.)

MR. FRIEDMAN: May I read these to the jury?

THE COURT: Sure.

(At this point Defendant's Exhibit G in evidence was read to the jury by Mr. Friedman.)

Q Mr. Zander, does that serve in any way to refresh your recollection about that proposed or contemplated association with Goldman?

A Only to the effect that it would be the type of letter I would write. It would be in line with our type of business to make that kind of offer.

Q And before you wrote this letter and offered Mr. Goldman a share of the concession revenue did you take that up with your management?

A I probably did, but I don't remember.

MR. FRIEDMAN: May we have marked as Defendant's Exhibit H a single page document with a cover of memo pieces.

(Defendant's Exhibit H marked for identification.) xx

Q In the operations of Sportservice focusing let's say on the year 1965, 1966, this was a private company, right?

A Yes.

Q Its affairs were run privately?

A Yes.

Q It didn't issue to the public, did it, operating statements of its income or losses?

A No.

Q This was considered, as a matter of fact, very confidential information, wasn't it?

A Yes.

Q And it was the kind of information that you went to great lengths to see did not get out into the public?

A By the public -- it went out to certain people but by the public you mean publicly to everybody?

Q You didn't disseminate this to your competitors, did you?

A No.

Q You didn't disseminate it to anybody outside of employees and only certain employees of your own company, isn't that right?

A No.

Q What is not right?

A It would be that type of information which would be given to banks.

Q Your banks would know your financial condition?

A Yes.

Q Who else would know of it besides your own banks?

A The banks would be primarily the ones.

Q So we have your banks,which is to say banks that were lending you money, is that right?

A Yes.

Q And they had to have this kind of a thing in order to make some judgment about whether the loans that you were asking for or the balances that you carried were reasonable, right?

A Yes, there was one other type of person that would sometimes get this. If we were making a bid, a public bid, generally speaking in many cases they would say they would like as part of the paraphernalia a financial statement.

Q And did you then give them a financial statement of the entire enterprise?

A I didn't give it to them. It was our finance department gave them -- sometimes gave them what might be called an abbreviated statement, sometimes a full statement. I don't know.

Q But ordinarily it was treated as highly confidential material; is that right?

A Yes.

Q You didn't, for example, at the end of the year, print up copies of your financial statements, your profit and loss statement and your balance sheet and hand them out to your thousands of employees,did you?

A No.

Q And you didn't send copies of them around to state registry agencies and say see here, we are in good condition and you can tell that from our financial statement, did you?

A No.

Q Can you identify this document which has been marked Exhibit H for identification?

A Yes.

Q Is that your handwriting on the cover sheet?

A Yes.

MR. FRIEDMAN: I offer it in evidence, if the Court please.

THE COURT: Any objection?

MS. STRAUSS: May we have a further foundation as to whether the entire exhibit was transmitted? I object on the grounds that there is inadequate foundation as to whether the first page was transmitted or both pages were transmitted.

THE COURT: All right.

This document on top addressed to Mr. Irving Goldman, right?

THE WITNESS: Yes.

THE COURT: Kind of a front sheet?

THE WITNESS: Yes, interoffice transmittal sheet.

THE COURT: Was the document which is the second document transmitted with the first one?

THE WITNESS: Yes, it was.

MS. STRAUSS: We have no objection, your Honor.

(Defendant's Exhibit H received in evidence.)

xx

MR. FRIEDMAN: May we pass this to the jury?

THE COURT: Sure.

(Pause.)

(Continued on the next page.)

b pm

Q Mr. Zander, when you told the government representative about Mr. Altman's gift to you in August were you asked when you paid taxes on that?

A Yes.

Q What did you say?

A I told them -- at the time of the gift? No, I am sorry, I misunderstood the question.

THE COURT: What did you say in August?

Q What did you say to the government representative in August when you brought to the government's representative's attention the fact that you received a $30,000 cash gift?

A In August of what year?

Q August of this year when you told the government representative of this event. Were you asked at that time by the government representative whether or not you had paid taxes on this money?

A Yes.

Q What did you say to the government representative in August in answer to that question?

A I said yes.

Q You said you had paid taxes.

A Yes.

Q I thought this morning, Mr. Zander, I asked you about whether you paid a tax and you told me it was a gift and, therefore, you didn't pay tax.

A I hadn't paid tax at that time. I ultimately paid the tax.

Q You ultimately?

A Yes.

Q Well, ultimately can be a long time.

MS. STRAUSS: Objection.

Q What year ultimately did you pay the tax?

THE COURT: All right, no more.

What year did you pay tax?

THE WITNESS: 1969.

Q This was something that you received in 1965?

A I don't remember exactly what year I received it. It could have been '65 or '66.

Q Whether it was '65 or '66 if it was taxable to you as income the tax on it should have been paid no later than March or April 15, 1967, is that right?

A At the time I did not know it was taxable.

Q And something came along after a while and suggested to you that it was taxable as income?

A Yes.

Q What was that that came along?

A A state audit.

Q A state audit?

A Yes.

Q New York State income tax?

A Yes.

Q Audited you?

A Yes.

Q And they then found out that you had this cash receipt?

A They calculated a deficiency in my cash returns of 30,000 -- they did not accept the Altman gift since I did not have proper substantiation. They indicated I did not have proper substantiation for that $30,000.

Q Let me understand. In the year in which you got the gift you thought it was a gift, right?

A Yes.

Q And you thought it didn't have any taxable impact upon you, am I right so far?

A That is correct.

Q Therefore, in the income tax that you filed for that year you didn't show the receipt of that money, did you?

A That is correct.

Q What was it that brought the receipt of that $30,000 in cash to the attention of New York State where they didn't accept your treatment of it?

A They had asked for a complete audit of my returns with a request for all records of my financial condition and they made a complete record of all income less expenditures and then it balanced out but included in my income I showed the $30,000 gift. The state had calculated that what I outlined had balanced out but that the $30,000 gift was not properly substantiated. So they assessed me for the $30,000.

Q Did they do what sometimes is known as a net worth audit on you?

A Yes.

Q They investigated your honesty in reporting income, is that it?

A Yes.

Q And as a result of this net worth audit on you they came up with at least a $30,000 discrepancy, that is to say you had more coming in than you were showing in your returns, right?

A On the basis that they did not accept the Harry Altman gift as being properly substantiated.

Q So they said, Mr. Zander, they wanted you to pay taxes on that $30,000?

A That is correct.

Q You said to them, as I understand you, "Well, look, it is true I have $30,000 in otherwise unexplained income but this was a gift and I really can prove that very simply," did you tell them that?

A When I gave them my figures I included that gift in the figures and it was that particular item that they did not accept because it was not properly substantiated.

Q But when you say not substantiated you told them did you not, look, this is clearly a gift, there is a Mr. Altman who gave it to me, all you got to do is go talk to Mr. Altman and he will confirm to you that it was a gift, didn't you say that to him?

A No, because he was dead.

Q When did Mr. Altman die?

A He died, I believe, in '67 some time.

Q Did you make any effort to be in touch with his family or representatives to see whether there were any records that would confirm your report of a gift?

A No, because he had given it to me in cash. No, I didn't.

Q Did you ask Mr. Louis Jacobs, with whom you had cleared the receipt of the gift, to come down to the tax people and at least tell them that you had told him at the time that it was a gift so at least you would have some contemporaneous reference to support your version, did you ask him to do that?

A Yes.

Q Did he go down there?

A He agreed to go down but the state examiner said he would not accept any statement from Mr. Jacobs. The only thing he would accept would be written substantiation from Mr. Altman and in view of Mr. Altman having died I said there is no way I can communicate that. That was impossible.

Q Did you suggest to the state examiner that he might find out whether or not that $30,000 had or had not been deducted by Mr. Altman as a business expense?

A I did not make the suggestion.

Q So you paid some state tax on that $30,000?

A Yes.

Q With interest?

A Yes.

Q And with penalties?

A Yes.

Q Fraud penalties?

A I don't know what they were called. They were called -- I believe they were called negligence penalties.

Q Once the state got hold of you on this $30,000 was the federal government far behind?

A I volunteered. I made an amended return to the federal government.

Q Somebody helped you with that?

A Yes.

Q Who?

A Mr. Almasi.

Q Another corporate service for you in your personal capacity?

A Yes.

Q Did you speak with Mr. Jacobs about the problem and say you needed help in determining what to do in handling this for federal income tax purposes?

A No.

Q In any event, Mr. Almasi gave you help, he told you to file an amended return and you paid some money there?

A Yes.

Q Interest?

A Yes.

Q Penalties?

A Yes.

Q Fraud?

A No.

Q Negligence?

A Yes.

Q I show you what has been marked as Exhibit I for identification and ask you whether you can identify that.

A I don't remember it. I can only, based on this, it was something Mr. Goldman asked and I had Mr. Kraus -- well, it doesn't ring any bell to me. I don't remember.

Q The top sheet, Mr. Zander, it says to Goldman from J. Zander and at the bottom there is a note and the signature Jack. Is that your signature?

A Yes.

Q The material with it, whether you remember the event or not, can you identify this as material that went with that cover?

A Yes.

MR. FRIEDMAN: I offer the material in evidence.

MS. STRAUSS: No objection.

(Defendant's Exhibit I was received in evidence.)

xx

Q By the way, when you met with the government's representative and talked about Mr. Altman and you told the government representative that there came a time later that you paid more taxes were you asked what it was that led to your paying more taxes?

A I don't understand the question.

Q Well, you went to see the government and you told them about Mr. Altman's gift and you told the government in August of this year, you told the government that you had not originally paid taxes but that later, some years later you had paid taxes, right?

A Yes.

Q And my question is did you tell the government representative in August of this year when you discussed that incident why it was or how come it came to pass that you ultimately had to pay taxes where you had not in the beginning?

A It was through this tax audit.

Q You told the government that you had been the subject of a tax audit by the state?

A Yes.

Q And you told them it was a net worth test that had been run on you?

A Yes.

Q That they had investigated all your income from all sources and all your expenditures?

A Yes.

Q Do you still have before you what has now been marked Exhibit I?

A Yes.

Q Mr. Kraus is still the Buffalo lawyer?

A He is sometimes employed as a lawyer in Sportservice, yes.

Q The note on the first page, the so-called inter-office transmittal, there is a date 7/27/68 and there is an X in the box that says "Please handle" and the words are "Draft outline per your request."

Does that mean that you were sending to Mr. Goldman something that he had asked for, asked that you get for him?

A Yes.

Q And this was a draft of an agreement as prepared by Mr. Kraus, right?

A Yes.

Q So you had gone as a result of some conversation or communication between yourself and Mr. Goldman, you had gone to Mr. Kraus and told him that you wanted him to prepare a certain kind of an agreement, right?

A Yes.

Q Looking at the agreement are you able to tell me what business was contemplated?

A No, I can't.

Q Let's look at Mr. Kraus' note to you and I am going to read it to the jury. It says "In preparing the attached agreement I used the names listed below to make it more understandable. The first part I -- and it says Jola Candy Corporation agent -- XYZ Corporation, and the next line says party to prior contract granting vending privileges -- ABC Corporation.

" In using this agreement I believe that it is completely explanatory by itself and no further instructions are needed. In using this agreement, however, it is necessary to refer to the prior contract which gives the vending privileges to Jola Candy Corporation and this agreement should be studied to make certain that there are no unusual clauses which should be covered or taken into consideration in the attached agreement," and the name N. Kraus is typed in.

Now that I have read that to you, Mr. Zander, does that refresh your recollection about why you were having Mr. Kraus, the Sportservice attorney, prepare an agreement that was going to be between Jola and a company called XYZ Corporation and having to do with some kind of vending of electrically operated vending machines?

A Any answer I would give would be just speculation. I just don't remember.

Q But you are satisfied of this much: Whatever this was, it was some kind of a proposed contract in which your company, Sportservice and you, had enough of an interest that you would use your own people's time and your own time to prepare an agreement involving Jola?

A Yes.

THE COURT: Ladies and gentlemen, tomorrow I will not be in the courthouse. If I don't come that means you don't have to come. You will have tomorrow off. We pick up Thursday at 10 o'clock.

(Jury left the courtroom.)

THE COURT: That goes for you too, Mr. Zander. Thursday, 10 o'clock. I don't want you talking with anyone from the government with the exception perhaps as to tell them where those files are that we are looking for, the corporate files, do you understand that?

THE WITNESS: What corporate files, your Honor?

THE COURT: What is the name of the corporation?

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MR. FRIEDMAN: Pobrian.

THE WITNESS: That was my question, your Honor. I was going to be staying over. As I told Mr. Goldman's attorney, I have the information at home. If I am to bring it then I will make arrangements to go home.

THE COURT: I don't care who gets it as long as it gets here.

THE WITNESS: Is someone going to make arrangements for Sportservice to get it?

THE COURT: I doubt it.

THE WITNESS: You suggest I go home and get it?

THE COURT: Yes, I suggest you go home and get it. Get it back here on Thursday.

MS. STRAUSS: May we have a short conference?

THE COURT: Sure.

(In the robing room.)

MS. STRAUSS: Your Honor, I would like to put on the record what I learned when I asked Mr. Zander how it was he came to be audited for these purposes. I think there is some confusion here when he was saying that there was a net worth investigation. What I understand from what he told me is that ultimately the state did do an assessment of his net worth from many years

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back in order to determine when the $30,000 would be allowed or not allowed and what he would have to pay taxes on. What he explained as to how that got started was that his wife died and when his wife died his and her joint safe deposit box in Buffalo was sealed by the state and then gone into by the state to be reviewed and it was when they found the $30,000 cash and at that time he had additional cash in the safe deposit box, $20,000 cash, they then decided to conduct an audit of all of his income. When they conducted his net worth audit they allowed the $20,000, as I understand it, because he was able to show that this was money that he had been able to save from income he had taxes on over the years and they allowed this as a savings from income that had already been taxed. But as to the $30,000 as he was explaining, I think it is not even 30, I think 25,000 was not allowed because he was unable to substantiate the gift with any written instrument which is what they were requiring.

So to the extent that Mr. Zander did not give you that background I wanted to give you the additional background he had given me and he did not explain to me that there had been some sui sponte investigation of his net worth. I never understood that to be the case and I don't think it was the case. Also we have Mr. Zander's tax returns. If defense counsel, although he hasn't requested them from Mr. Zander or myself, if he wants them he is welcome to review them for purposes of reviewing the material that Mr. Zander testified about.

MR. FRIEDMAN: If your Honor please, at one point I am going to lose the power to explain what I want. A hyperbole would be inadequate here. I can't believe what is going on here. I think when we were in the robing room -- that was the first time we heard the man had a tax something or other that resulted from a payment of tax because the testimony earlier was that he had and I think this fellow said something that there was nothing shown about that and nothing I learned about that that indicated anything adversely about his character or his unblemished status and then I asked the man about it and he says oh, no, I told them that I had a net worth test and I told this and I told that and obviously what he had was a kind of investigation that suggests a very definite blemish on character and his answers indeed prove that.

Now we are told something more and it keeps coming, now the $30,000 was still in cash in a safe deposit box when his wife died and they sealed it. Good reason to have something in New York perhaps in a corporate name. But in any event, $30,000 in cash in the box, that is how that was discovered plus $20,000 in additional cash. Judge, when do you get to put finis on this thing? I can come back in here every time one of these things happens and I am beginning to think that I look like some kind of fool. Can't I at some point, get to the point where I say, "Judge, we have more than enough, this is unbelievably enough that says that a litigant,be it the United States Government or anybody else can't treat us this way".

THE COURT: I expect to find a little tin box in this case soon.

MR. FRIEDMAN: They did find a tin box.

MS. STRAUSS: This is not in New York, this is in Buffalo. This has nothing to do with the safe deposit box.

MR. FRIEDMAN: I well understand that. It would be the same if he had it in Timbucktoo. The man told you he was picked up for failing to pay his taxes several years after the event. He was picked up in an investigation which got to the point where they said "Tell us all you have spent and we are going to see whether you are an honest citizen"and they said "You are not an honest citizen because you have $30,000 not accounted for"and some other way when his wife died they found $30,000 in cash sitting in a box which he called a gift. All I am saying is even by the standards that Miss Strauss used the last time we were in this robing room before that should have been turned over to us. It should have been turned over to us even apart from that.

Judge, there has to be some sanction for this.

THE COURT: I hear you.

See you here on Thursday.

(Adjourned to Thursday, September 1, 1977, at 10:00 o'clock a.m.)

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United States of America

v. 75 Cr. 337

Irving Goldman

New York, New York

September 1, 1977
10:30 o'clock a.m.

- - -

(Trial resumed.)

- - -

(In the robing room.)

MR. FRIEDMAN: If your Honor pleases, if I can just fill your Honor in on a couple of things that happened. Yesterday morning I understand Ms. Strauss called and at or about the same time sent up to us and we received a copy of that charter, corporate charter of that Robrians Corporation that perhaps says -- a company does well, by a copy of the certificate of dissolution, which it filed with the Secretary of State of the State of the State of New York.

She indicated that she would be calling us further during the course of the day about further papers that were expected as I understand it. About 5:30 in the afternoon Ms. Strauss called again and spoke to Mr. Wang and I believe said there were additional papers that were available, some of which perhaps had been copied or would be available to be taken when we came down, others of which they had not yet had a chance to copy.

In any event, at 7 o'clock roughly Mr. Udell and I went down to One St. Andrews Plaza and we met with Ms. Strauss and Mr. Lippe was there.

At the time for the first time among other things we were given copies of the note that Zander signed, the agreement, the so-called $36,000 a year until retirement negative covenant agreement, papers on Glen Park Casino, and the letter to which the witness had referred having to do with his agreement with his counsel or the understanding with his counsel about conflict of interest.

I think that one other thing that I should add is that on Tuesday evening which was the last day we were with you, Judge,but on Tuesday evening we received copies of income tax material pertaining to Zander. That's where it stands.

I should say, Judge, that in a way we have been lucky because the cross examination here has by luck, because I surely don't plan any cut in terms of inspired cross examination, touched upon a number of things that have revealed to us Brady material that has been in the possession

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of the government for a long time.

I told your Honor when we were here the last time that we were going to present to your Honor a written submission in support of our application for dismissal. When we got back last night Mr. Udell and I, Mr. Wang having watched the store, so to speak, and working on this thing, he said he wanted to read something to me. He read it to me. I am going to read it to your Honor if I may, just for a moment. Under Brady v. Maryland with the citation, all exculpatory material is demanded, paren Item 7, although the government acknowledges its Brady responsibilities it opposes the present production of such material because it may provide the defendant with the Opportunity to fabricate a defense. There is indeed support for the proposition that Brady material need not be turned over prior to trial. But if exculpatory evidence is produced for the first time at trial the defendant may not have an adequate opportunity to effectively utilize the material particularly if it points to the existence of other evidence helpful to the defendant. Omitting citations. I therefore direct that all the Brady material be immediately provided to the defendant, citations omitted.

I want to call attention to the Court, if I may, to the underlying, I notice you have it, Judge, the underlying sentence, that was the sentence which I think Mr. Wang brought to my attention, he said where-- that's from United States v. Goldman, I think he meant o understand because the conversation followed that I had remembered that your Honor had said that. He was wrong. Because what I was saying then was that sentence covers our case as it is now, as if I anticipated that would be a proper holding and finding for your Honor to announce now in response to the present application.

I just think it is funny because I didn't remember that language as such. But it fitted the case.

THE COURT: I did.

MR. FRIEDMAN: Then, your Honor's memory again has been proved to be better than mine. The August 16th opinion dealt with that question again. Your Honor said the fact that defendant asserts that the government is withholding Brady material does not make it so. If defendant's claim be true appropriate action will be taken at the time of trial when such a showing is made. I will add one more thing but it is really superfluous.

The first time we saw you, your Honor, Mr. Schwartz and myself that you had certain standards with respect to discovery, certain standards with respect to disclosure of government to defendant, of evidence or material which the government was going to rely, you wanted Schwartz particularly to know that because you said I think either at the time or the next time we were before you that there was no point that the government had a case, in hiding the case there should be fair disclosure. What has happened is that there certainly has not been, there has been Brady withholding which by any standards is monumental in size and importance.

It has impacted our ability to conduct the defense of the case. Your Honor gave us a day yesterday but I had to go down and spend two hours in . Schwartz' office reading stuff last night, some of which I saw for the first time, some was clearly Brady. I have to figure out cross examination. My cross examination of this witness is in a sense spastic as I find out things I should have known on or about June 27th, I have to go back to things.

I don't know what the jury thinks. I think the jury may say it is a very disorganized question. Nevertheless we are being impacted and it is a prejudice which is caused by the government's act in the face of your Honor's clear recollection.

If your Honor please, I submit that what we have got here before you which is only partial, the document says I think that this includes or these things are among those which are Brady materials which have been withheld. It may be a dismissal because of government's disobedience to your Honor's clear orders, a fortiori, it mandates mistrial.

In any event, Judge, we can not as your Honor has himself signalled in earlier decisions in this case, we cannot be without relief because of what the government has done. I resubmit that because the Court is interested in justice even if the United States is not, that the Court must do what is appropriate.

(Continued on next page.)

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THE COURT: You said you were going to have something for me.

MR. FRIEDMAN: Those are the examples set forth there. Your Honor will find that each one of those things is either in the material that was handed to your Honor, the so-called 3500 material, excerpts from that, or it is material which your Honor will recall in the testimony of Zander or Lynch or is in the exhibits which have been put into evidence. There is nothing there I think which is outside of those categories. Mr. Wang is nodding his head I think in agreement, right?

MR. WANG: I believe some of the things may relate to some of the things Ms. Strauss revealed in the robing room. We haven't gone into the safe deposit boxes.

MR. FRIEDMAN: Yes. Nothing that your Honor has not either heard or had in the record as such. That is true.

MR. WANG: The only other things, it doesn't include anything that was revealed last night when you went down to the government.

MS. STRAUSS: Your Honor. I would like to supplement the record by explaining that what Mr. Friedman and Mr. Udell reviewed last night were documents that I received in hand between 5:00 and 5:30 yesterday afternoon and having requested those documents from Sportservice Corporation with the course of the last day or so, specifically although defense counsel had not made a request of it to me, I don't know whether he made a request of it from Sportservice, I saw the contracts in connection with the amusement park that the witness has testified that Mr. Altman sold to Sportservice and any other documents relating to that amusement park that Sportservice still had on hand. Those were sent to me last night.

As soon as I received them I made up copies and those were among the materials that Mr. Friedman took away with him last night. I also requested from Sportservice various things that are unrelated to this claim, just the things that occurred to me in the course of cross examination.

For example, the original minute book of the Interborough News Company, I believe defense counsel had portions of that. We had portions of it. I asked him to bring down the original which they did. The defense attorneys asked that portions of that be copied. They have had portions copied previously, we copied those from them last night. There was for example a litigation

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file, U. S. Candy, which has nothing to do with the cross examination of Mr. Zander this far, I requested that yesterday, Mr. Friedman examined it. I believe he probably already had those documents, because I gather he was with the attorneys in the case. His name appears on many of the litigation documents. There were a few other things, a check related to Split Rock, various documents that I was trying to accumulate at this point to supplement what we have.

I am not going to unduly burden the record, your Honor, with a redeliberation of the statements I made on Friday. I, in summary, don't think that there has been any Brady violation. We are talking about cross examination of collateral matters as to which I believe it would have been a good argument that it need not have been proper cross examination. Having been gone into which is not at all surprising we are making and have made whatever effort we could to supply defense counsel, with whatever we can give him which might be relevant to this topic. There is nothing in this point in time that I know of and defense counsel hasn't alerted me of anything that they want beyond what we have already obtained for them, including the telephone number of Mr. Almasi, which defense counsel requested after he saw

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my letter as to our efforts to contact Mr. Almasi and possibly --

MR. FRIEDMAN: If your Honor please, I am very careful or I try to be careful of what I say in court. I didn't say that everything that was shown to us last night was Brady material because I don't regard that it is.

I think Ms. Strauss knows what she did last night. She figured that she would get some extra stuff in and say, look at all the nice things I have done as of Wednesday night.

What I do say and is the fact, that there were materials delivered to us for the first time last night that had been known to the government and are clearly Brady materials and have been known to the government for a long time. The note signed by Zander, the agreement, the Glen Park materials and the letter with respect to counsel, those are four specific things, those are four Brady things, things that are known to the government before this trial started, some of which as early as August, 1977, and as your Honor sees from the letter I submitted, a good part of the Brady material has been known and in the government's possession since February, 1975, and I don't want to go over that, the episode

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of where we suggested to your Honor that there was material where the government said it didn't want to show it because of the opportunity to fabricate a defense. Everything that is now shown shows that our instinct, all that we cover at that time, instinct based upon what people were saying was correct, the government continually denied it. That denial is now shown to have been bad denial, bad denial and there has to be a consequence for it because of impact.

THE COURT: All right. I am still reserving.

MS. STRAUSS: Your Honor, with respect to the schedule for next week, are you going to the Judicial Conference?

THE COURT: I don't know. Is the case going to finish, the jury is out, although I am mandated by statute to go.

(Discussion off the record.)

(In open court.)

(In open court, jury present.)

THE COURT: All right, ladies and gentlemen, I am sure you are wondering why the delay. When I first came on the bench they stuck me with 686 old dogs and I have gathered more than my share of cases since then. I was taking care of one of the old dogs. It is nobody's fault except mine.

JACK ZANDER, resumed the stand and testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. FRIEDMAN:

Q Mr. Zander, have you been able to find or obtain the corporate stock book, the corporate minute book, stock certificates or any other documents that pertain to Robrian Corporation?

A Everything that I had pertaining to Robrian Corporation that I could find I passed on to the United States Attorney.

Q Is the answer to my question that you don't have it with you today, what I have asked about?

A No.

Q The corporate stock book, the stock certificates, corporate minute book of Robrian, do you have them in your possession today?

A No.

Q Have you made some effort to look for them?

A I don't believe I ever had them.

MR. FRIEDMAN: May we have marked as the next defendant exhibit a copy of a document which begins an agreement made this 18th day of December, 1975.

(Defendant's Exhibit J marked for identification.) xx

Q Mr. Zander, I show you this document, Exhibit J for identification, and ask you whether you can identify it for me?

A Yes, I have this document. I didn't understand your question properly.

Q My question right now is can you identify that document which is in your hand for us?

A Yes, I can.

Q What is it?

A It is an agreement between Sportservice Corporation and myself.

Q This is the agreement under which you are paid $36,000 a year?

A Yes, it is.

MR. FRIEDMAN: I offer that exhibit into evidence.

MS. STRAUSS: No objection.

(Defendant's Exhibit J received in evidence.) xx

Q I show you now a document which has been marked Exhibit K for identification and I ask you whether you can identify that for me?

A Yes, I can.

Q What is that, sir?

A That is a promissory note signed by me for $95,000.

Q And that is the note to which you have referred in your testimony heretofore?

A Yes, it is.

MR. FRIEDMAN: I offer that document into evidence.

MS. STRAUSS: No objection.

THE COURT: Mark it in evidence.

(Defendant's Exhibit K received in evidence.) x

Q I show you a document which has been marked as Exhibit L for identification and ask you whether you can identify that document?

A Yes.

Q What is that document?

A That is a document that I signed authorizing attorneys, Mr. Berg, Hollman and Mr. Goldstein, to act as my attorneys.

MR. FRIEDMAN: I offer Exhibit L into evidence.

MS. STRAUSS: No objection.

THE COURT: Mark it in evidence.

(Defendant's Exhibit L received in evidence.)

xx

Q Mr. Zander, Exhibit L is a letter with your typed letterhead dated March 3, 1975 and it is addressed to three gentlemen, Steven Berg, Daniel P. Hollman and David A. Goldstein. You have told us heretofore about Hollman. I want to know about Mr. Berg. Who was Mr. Berg as of March 3, 1975?

A Mr. Berg was the attorney for Sportservice.

Q And for Emprise?

A And for Emprise.

Q And for the related group of companies?

A Yes.

Q And he together with Mr. Hollman acted as your counsel in relation to the subject matter of these proceedings, didn't he?

A Yes.

Q So you had not just one lawyer, Mr. Hollman, but you had two, you had Mr. Berg as well, is that correct?

A Yes.

Q Mr. Berg is a member of the law firm of Berg & Cornell?

A Yes.

Q That is a firm you have had things to do with over the years of your employment with Sportservice and Emprise?

A Yes.

Q They do a lot of work for your companies and did a lot of work for your companies?

A I don't know the extent of the work they did for my companies.

Q But there was a substantial amount?

A I don't know how substantial because they worked primarily directly with Mr. Jacobs.

Q There is a gentleman here named David A. Goldstein. Who was he?

A Mr. Goldstein was recommended by Mr. Berg to me. He was a New York City attorney.

Q Where is his office?

A In New York City. I don't remember where.

Q And he also acted in your counsel in relation to the matters having to do with Interborough News and this case?

A Only initially.

Q He did for some period of time or other act as your counsel, right?

A Yes.

Q And he was also at the time that he was acting as your counsel with reference to matters in this case, an attorney for Emprise and/or Sportservice, isn't that right?

A Yes.

Q I think that you told us the other day about what happened with Mr. Hollman's possible claim against you for legal fees or charge against you for legal fees. What is the story with respect to Mr. Berg? Has he given you a bill for legal fees?

A No.

Q Have you had some discussion with him about whether he is going to give you a bill for the time and the effort that he has put in in your representation with respect to these matters?

A No.

Q Has he talked to you about that subject?

A No.

Q Do you know whether or not he has rendered a bill for his services in that respect to Sportservice or Emprise?

A I would not know.

Q So all that you know is that here we are on September 1, 1977, more than two years after you signed this letter, and the letter itself was signed after these people had started to represent you, and you haven't yet talked to Mr. Berg about legal fees?

A That is correct.

Q Let's talk about Mr. Goldstein. Mr. Goldstein was somebody that you had or had not known before?

A I had not known before.

Q And he was recommended to you by Mr. Berg?

A Yes.

Q And it was told to you that he was a man who had also done work or was doing work for Sportservice or Emprise, right?

A He had done some work on previous occasions.

Q Have you had a bill from Mr. Goldstein for his services?

A No.

Q Have you had a discussion with Mr. Goldstein about a bill for his services?

A The first time -- when I met Mr. Goldstein he asked me the question. He asked the question whether this would be billed to me personally or Sportservice and I responded that I believe it would be Sportservice.

Q You responded to Mr. Goldstein that the services he was going to render to you personally should be billed to Sportservice in connection with this matter, is that right?

A That is what I told him.

Q Did you then discuss it with him at any later time?

A No.

Q And you have never received a bill?

A No.

Q I think you said at an earlier point of your examination, Mr. Zander, that you had a safe deposit box personally in Buffalo, do you have that right?

A Yes.

Q And you also testified to having received, as you called it, a gift of $30,000 from Mr. Altman, do you remember that?

A Yes.

(Continued on the next page.)

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Q I think you also testified how it was that either the State of New York and it's Tax Department had found out about that and had done something to you with respect to making you pay some taxes on it, do you remember that?

A Yes.

Q Do you remember how it was that this $30,000 came to the attention of the State of New York, this $30,000 which I think you testified you received in cash?

A It came to their attention after my wife passed away and as a procedure they sealed the box and then they unseal it in the presence of a bank official and I believe someone from the state and that is how it came about.

Q What did they find in the way of cash?

A They found cash and I believe stocks.

Q How much did they find in the way of cash?

A I believe it was about $60,000.

Q $60,000 in cash in a safe deposit box?

A Yes.

Q Of which $30,000 represented the moneys that Mr. Altman had allegedly given you as a gift?

A Yes.

Q You testified earlier that the Altman gift, at least as I understand it, was a gift which he made to you during his lifetime rather than at the time of his death becuase you would be embarrassed by it, is that right?

A Yes.

Q And I believe you testified, as far as I understand, that that was one gift, is that right?

A Yes.

Q But in fact did he give it to you all at one time?

A Yes.

(Defendant's Exhibit O was marked for identification.)

Q I show you Exhibit O for identification, Mr. Zander, and ask you whether you can identify that.

A Yes, I can identify it.

Q What is it, Mr. Zander?

A It is a letter from Mr. Almasi to the Internal Revenue Service.

Q Having to do with the clearing up of your tax deficiencies or delinquencies?

A Yes.

Q And Mr. Almasi was at the time that he wrote that an officer of Sportservice or Emprise, wasn't he?

A I am not sure.

Q He was an officer of one or the other?

A I am not sure.

Q He was certainly employed, was he not?

A Yes.

Q And he was doing this work on your behalf, is that correct?

A Yes.

MS. STRAUSS: No objection.

THE COURT: Mark it in evidence.

xx (Defendant's Exhibit O was received in evidence.)

Q On the third page of the exhibit -- May I approach the witness, Judge?

THE COURT: Sure.

Q On the third page of the exhibit, Mr. Zander, there is a document called Amended U.S. Individual Tax Return, is that right?

A Yes.

Q And does it bear your signature at the bottom?

A Yes.

Q And it bears a date July 11, 1968?

A Yes.

Q And is this a document that you signed?

A Yes.

Q And is it a document that you reviewed before you signed?

A Yes.

Q And was it correct and truthful so far as you knew at the time?

A Yes.

Q Now I want to turn over to the second page of that document which you signed which says Part 2, explanation of changes to income deductions and credits. I am going to read what is written there. "New York State audit ruled against a $30,000 gift received over three years".

Now that I have read that to you does it refresh your recollection whether or not you received the $30,000 at one time or over a period of time?

A Yes, it refreshes my recollection but I received it at one time, the same thing I told you.

Q You received it at one time but it was for the purpose of paying you $10,000 a year for three years?

A No -- well, yes. May I say something?

Q Certainly.

A The state auditor advised me that I could show that over a three-year period. They said you can go back three years and therefore you canshow $10,000 additional income each year. The state told me I could do that.

Q And you wrote on this document that the gift was received over three years. Was it received over three years?

A No, it was not received over three years.

Q But that is what is written here, isn't it, Mr. Zander?

A Well, I didn't write it.

Q You signed it, didn't you, Mr. Zander?

A Yes.

Q This $30,000 in cash was part of a larger sum of $60,000 in cash which you say was sitting in your personal safe deposit box as of 1969, is that the right year?

A Yes.

Q The $30,000 you got from Mr. Altman as this gift,that was legitimate, wasn't it?

A Yes.

Q There was no problem about that, was there?

A No.

Q It wasn't unlawful?

A Well, no.

Q Your employer knew that you were going to get this money?

A That is right.

Q Let me look at something else. You are a man who knows that money earns money, right?

A Yes.

Q And that you can take money and invest it and earn further money, right?

A Yes.

Q And you have over the history of your life made some investments in stocks, haven't you?

A Yes.

Q And you have made some investments -- I won't say investments -- you put money into savings banks?

A Yes.

Q And you earned money on money?

A Yes.

Q As of about 1969 and 1970 you had rather a substantial accumulation of money or stocks or money in banks, isn't that right, apart from this $60,000?

A Yes.

Q How much would you say as of 1970 you had in the way of stocks and savings accounts approximately?

A $150,000.

Q $150,000. Would you give me a judgment, Mr. Zander, about an average rate of return or income as of 1969, 1968 that could be gotten on money or stocks? What kindof percent would you say?

A The going interest rate, whatever it was at that time, 5 percent, 4 percent, I don't know.

Q 5 or 4 percent for savings banks and if you put your money into stocks, and you had invested substantial moneys in stocks, hadn't you?

A Yes.

Q The dividends would even be higher than 5 or 4 percent?

A Depending on the stocks you purchased.

Q And they oftentimes were, weren't they?

A Yes.

Q As a matter of fact, there were years in this period, 1968, 1969, 1970, possibly 1971 when you were reporting as much as 10 or $11,000 of income in interest and dividends alone, isn't that right?

A Yes.

Q Nevertheless, this $30,000 of cash that you say was legitimate sat in the safe deposit box from the day you got it, right?

A Yes.

Q And earned nothing?

A Yes.

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Q I want to show you Exhibit M for identification and ask you whether you can identify that for me.

A I don't remember it. It would -- I don't remember it precisely, no.

Q All right.

MR. FRIEDMAN: If your Honor please, I offer Exhibit M into evidence.

MS. STRAUSS: No objection.

THE COURT: Mark it.

xx

(Defendant's Exhibit M was received in evidence.)

THE COURT.: Let me see it.

(Pause.)

Q Exhibit M, Mr. Zander, is the certificate of incorporation of Robrians Corporation, and did you notice who the incorporator was, the sole incorporator?

A Louis Almasi.

Q He was an employee of Sportservice or Emprise at the time that he was the sole incorporator on that corporation, is that correct?

A Yes

MR. FRIEDMAN: If your Honor please, Exhibit N for identification is a copy of the certificate of dissolution and I offer it into evidence.

MS. STRAUSS: No objection.

(Defendant's Exhibit N was received in evidence.)

THE COURT: Don't we have a copy of this, not certified, but a copy?

MR. FRIEDMAN: Yes. I am not sure if it's completely as full as this one here, your Honor.

THE COURT: All right.

(Defendant's Exhibit P was marked for identification.)

MR. FRIEDMAN: If your Honor pleases, Exhibit P for identification is a copy of an agreement made in 1967 and there is another copy of this document in evidence as the Split Rock document.

There is also a copy of a -- if your Honor please, I have misstated myself. I will withdraw that. It is a copy of the agreement made March 15, '67 between Sportservice, Goldman and Kwoh, and that has been put into evidence but by a different copy heretofore. It is also a copy of an agreement dated May 5, 1969 between August Heckscher, as the Administrator of Parks and New York Sportservice Corporation. There is appended to the top a hand written memo. I offer the entire thing.

MS. STRAUSS: If the note can be identified.

I don't know if the witness knows anything about it.

THE COURT: Take a look.

Do you know anything about the note on top?

THE WITNESS: Not the note on top.

THE COURT: This.

THE WITNESS: No, I don't. The specific note as to, and -- I know that what it says is accurate. But I don't know about, I never saw this particular notation. But, are you asking, your Honor,whether, what I said here is correct?

THE COURT: Yes.

THE WITNESS: Yes,that is correct.

THE COURT: That is correct?

THE WITNESS: Yes, it is, your Honor.

THE COURT: All right.

Do you know who made the note?

THE WITNESS: No.

MS. STRAUSS: We have no objection to the agreement, but as to the note that he can't identify, we object.

THE COURT: Do you want the note in?

MR. FRIEDMAN: If your Honor please, can I step around the other side for a moment?

THE COURT: Yes.

(At the side bar.)

MR. FRIEDMAN: There is nothing earthshaking. This is a copy of the document that Ms. Strauss supplied to me. She said she got it from Sportservice.

THE COURT: It might be King Kong who wrote the note.

MR. FRIEDMAN: I am not suggesting otherwise.

THE COURT: On the other hand, it says --

MS. STRAUSS: I can't even read it clearly.

(Continued on next page.)

THE COURT: It says Unit Pelham Golf Course Instrument Tri-Party Agreement with share of profits by NYSS with Kwoh and Goldman, date March 15, 1967.

MS. STRAUSS: I don't see why it should go into evidence, your Honor. If there are going to be absolutely no objections in this case as to authenticity, then we won't raise it. But --

MR. FRIEDMAN: I may have offended you some other time -- we are dealing with this thing now.

MS. STRAUSS: I don't see why notes that haven't been authenticated should come in in general. I don't want to start doing it now and suddenly have all sorts of things coming into evidence, when we don't know who wrote them.

THE COURT: As a tactical matter she is right.

MR. FRIEDMAN: I can't disagree with that. We will have to say that I understand that the exhibit is received without the note and I shan't refer to the note. What is right is right as a technical matter, even if it has been supplied to me by the government.

THE COURT: I don't care who supplied it.

MS. STRAUSS: There is a second note, I have one on my copy three pages later.

THE COURT: I see it. This one is signed by

Kraus.

MS. STRAUSS: If he can authenticate it, all right.

THE COURT: Why don't we take out the two notes, and otherwise it is received.

MR. FRIEDMAN: All right.

(In open court.)

MR. FRIEDMAN: Would you mark this.

(Defendant's Exhibit O marked for identification.)

xx

Q Mr. Zander, I show you what has been marked as Defendant's Exhibit O for identification, which is on the letterhead of Sportservice Corporation, dated March 24, 1966, and I ask you whether that is your signature on it?

A That is my signature.

Q All right. I will ask you to read it if you will, to yourself.

A All right.

(Pause.)

THE COURT: Did you read it?

THE WITNESS: Yes, I did.

Q I show you, Mr. Zander, a copy of an Exhibit R for identification, and I ask you whether your signature appears on the covering note or memo?

A Yes. That is my signature.

Q Do you recognize the document with which it is enclosed?

A I don't remember the document. But --

Q Do you remember the subject matter?

A Not really.

MR. FRIEDMAN: If your Honor please, I offer Exhibits Q and R into evidence.

MS. STRAUSS: Your Honor, as to R, I believe that there is a hearsay objection as to the entire second page.

THE COURT: Let me take a look at it.

As to Q, you have no objection?

MS. STRAUSS: As to Q I have no objection.

THE COURT: All right. Mark Q in evidence and let me see the other one.

(Defendant's Exhibit Q received into evidence.) xx

THE COURT: All right, ladies and gentlemen, I know that we started a little late today, it is time for the normal break, maybe you don't need it but I do, all right. May I see both counsel in the chambers.

(In chambers.)

THE COURT: I am worried about Exhibit R. It is obvious this is half a document. It starts and has three full paragraphs and then starts in the middle of a fourth paragraph,where is the rest of the fourth paragraph. It is not even a capital letter.

MR. FRIEDMAN: I can't tell you, Judge. All I can tell you is that O which is in evidence is related to R, in terms of subject matter; if this thing is R for identification, as a fault of mechanics, that is the way we have it.

THE COURT: Do you know?

MS. STRAUSS? I have no idea. I believe it probably comes out of the Jolo files, is that right?

THE COURT: It is something addressed to Jack Zander, Unit Interborough News Company from George P. Booth, I have no doubt that it comes out of Sportservice.

MS. STRAUSS: It is attached to the interoffice transmittal so it probably went to Goldman.

MR. FRIEDMAN: The original --

MS. STRAUSS: I don't see our numbers on it.

MR. FRIEDMAN: The transmittal form is an original as your Honor can see.

MS. STRAUSS: It was not given to our office at all?

MR. FRIEDMAN: I don't believe so. If it came from your production of documents it would have a number. It doesn't.

THE COURT: You start in the middle of a sentence and the middle of a paragraph. Who is George P. Booth?

MR. FRIEDMAN: One of the principals, Judge, of Interborough.

THE COURT: Does he speak English?

MR. FRIEDMAN: Booth and Meyers were the people who were bought out of Interborough by Sportservice.

THE COURT: Off the record.

(Discussion off the record.)

MR. FRIEDMAN: I am sure your Honor has noted that the fourth paragraph of Exhibit O which makes reference to Mr. Booth for his further guidance, George Booth wrote to me as it pertains to his discussion with Mr. Wasserberger on that subject.

MS. STRAUSS: It is hearsay, Judge. They are trying to prove something that George Booth wrote down a long time ago as being a fact. We don't have the witness to say that any of this happened. It is not a proper way to prove this.

MR. FRIEDMAN: I will obviate that objection because I am not interested in what that memo says is true or not, just the fact that it was sent to Mr. Goldman.

THE COURT: All right. It is going to come in.

MR. FRIEDMAN: May I have the clerk mark Exhibit P in with the understanding that -- it hasn't literally been marked yet.

THE COURT: Yes.

(In open court.)

(Recess.)

(Continued on the next page.)

(In open court, jury present.)

(Defendant's Exhibit R received in evidence.)

xx

Q Mr. Zander, do you recall having looked at these two documents which are now in evidence, Exhibits O and R, that sometime in or about 1966 some question arose about whether or not there was a kind of operation which Interborough could do involving the shops and garages of the subway system?

A I am aware at one point we had some privileges in the shops and garages.

Q Are you aware that there was some problem about whether or not you could exercise it or something that had come up in connection with the Transit Authority?

A I don't recall that.

Q Did you ever, so far as you can recall, or is your memory refreshed by looking at these documents, talk to Mr. Goldman and ask for his assistance in connection with that problem?

A I don't specifically remember that.

MR. FRIEDMAN: May I read to the jury Exhibit O?

THE COURT: Sure.

(Defendant's Exhibit O in evidence was read to the jury by Mr. Friedman at this point.)

Q Mr. Zander, if you focus back to the year 1964 when your company,or in or about the beginning of 1964 when your company took over control of Interborough you did from time to time talk to Mr. Goldman about problems that arose or things that had to do with the business of Interborough, didn't you?

A Yes, I did.

Q And this was done not only by telephone or by letters, but as well, by meetings in person in New York, is that right?

A Yes.

Q And there was a fair frequency of those things, wasn't there?

A Yes.

Q And you asked for his advice and assistance in respect of the affairs of Interborough?

A Yes.

Q And he gave you advice and assistance, did he not?

A Yes.

Q And he gave you time, time which he devoted to the furtherance of the affairs of Interborough?

A Yes.

Q In 1964 and 1965 to the extent that he did that he was not an officer of Interborough, was he?

A No.

Q And he had no interest in the company, that is to say he owned no stock in the company, did he?

A That is correct.

Q And he had no salary or income from the company in 1964 or '65, did he?

A No.

Q So he was rendering these services to you and to your company and in return receiving nothing by way of value, is that correct?

A That is correct.

Q As these things went along, and I think you mentioned in your direct testimony that perhaps once a month, I think I have that right, you would come to New York and there would be meetings that you would have, I think you mentioned,with Mr. Wasserberger of the Transit Authority, is that right?

A Not that frequently. I might come once a month but when I came we did not always have meetings with Mr. Wasserberger.

Q On some of the occasions when you came in the period 1964, 1965 there were occasions when you and Mr. Goldman met with Mr. Wasserberger, is that correct?

A Correct.

Q And on those occasions at least in part you discussed affairs having to do with the business of Interborough and its relationships with the New York City subways or the Transit Authority, is that right?

A Yes.

Q Did you, as well, try to keep Mr. Goldman abreast of various developments that seemed to you important with respect to the health or the success of the business of Interborough?

A Yes.

Q And you did that, did you not, by making telephone calls to him from time to time, right?

A Yes.

Q And by sending him letters from time to time?

A Yes.

Q And also, did you not send him copies of letters that you had sent to other people having to do with the business of Interborough so that he would be able to see from the copies that you sent him what was going on with Interborough's business, do you remember doing that from time to time?

A Yes, it was generally at his request.

Q In any event, whether at his request or not you sent to him from time to time copies of letters which you sent to other people having to do with the business of Interborough?

A That is correct.

Q And as we have said before from time to time you met with him and you talked face to face about the business of Interborough?

A Yes.

(Defendant's Exhibit S marked for
xx identification.)

Q Mr. Zander, I ask you whether this group of papers that I hand you consists of copies of at least certain letters that you sent to Mr. Goldman in the course of this time referring to the affairs or business of Interborough?

THE COURT: Are these copies of letters which you sent him?

THE WITNESS: Yes.

MR. FRIEDMAN: I offer Exhibit S into evidence.

THE COURT: Except for the top notation, which apparently is your own.

MR. FRIEDMAN: No, sir, it is not mine.

Q Mr. Zander, do you see a penned, handwritten notation on a small piece of paper in the upper corner?

A Yes.

Q Can you identify that?

A No, I can't.

MR. FRIEDMAN: I will remove it, Judge, from the exhibit.

THE COURT: Okay.

MS. STRAUSS: No objection.

(Defendant's Exhibit S received in evidence.)

xx

Q I now show you Exhibits T and U, Mr. Zander, calling attention to the fact that this is now in 1968 but I ask you again whether these are copies of letters about the affairs or pertaining to the affairs of Interborough which you sent or had sent to Mr. Goldman?

A Yes.

MR. FRIEDMAN: I offer Exhibits T and U, if your Honor please.

A Exhibit T I know I sent to Mr. Goldman because this is my handwriting.

Q When you say this is your handwriting you are referring to writing on the first page which says "CC: Irving Goldman," is that right?

A Yes.

MR. FRIEDMAN: I will just offer Exhibit T for the moment, if your Honor please.

MS. STRAUSS: No objection.

THE COURT: Okay.

(Defendant's Exhibit T received in evidence.) xx

A Exhibit U I cannot say with certainty whether I sent Mr. Goldman a copy.

Q What is your best belief or recollection as you sit here now?

A I probably would have, yes.

MR. FRIEDMAN: I offer Exhibit U, if your Honor please.

MS. STRAUSS: No objection.

THE COURT: Mark it in evidence.

(Defendant's Exhibit U received in evidence.) xx

Q Mr. Zander, let's come to United States Candy Company. You testified in your direct examination that United States Candy Company was a company in which at least two gentlemen named Dechter and Greenberg were interested along with Mr. Goldman, is that right?

A Yes.

Q And these people through Mr. Goldman came to you to ask whether they could do business with Interborough, is that right?

A No, I don't believe so.

Q Tell me how it came about that United States Candy came into relationship with Interborough?

A Mr. Goldman, to my recollection, called me and told me that he together with these two gentlemen were forming or had formed a company called United States Candy that was going to deal in certain odd lot candies, that one of these people had good connections for getting odd lot, surplus lots candy at a much lesser price than the normal price of candy, of similar type candy. And he would like Interborough News to do business with United States Candy.

Q When Mr. Goldman put that proposal to you telling you he had an interest in this company, what response did you give him, yea or nay?

A Yes.

Q Was there anything unlawful about that arrangement as it was presented to you?

A No.

Q Was there anything improper about that arrangement as it was presented to you?

A No.

Q Did you, when this proposal was made, go to see Mr. Louis Jacobs and tell him what was proposed and asked him whether you should do it or could do it?

A I don't recall specifically at that time.

Q In any event, the proposal having been made and the proposal having been agreed to by you then United States Candy started the business with Interborough?

A Yes.

Q And made a profit theoretically, or tried to?

A Yes.

Q In other words, United States Candy in which Goldman had an interest, was going,if it was successful, to earn money, earn profits for its owner, profits generated by doing business with Interborough?

A Yes.

Q And you had no objection to that?

A No.

Q That was not unlawful, was it?

A No.

Q Having started with what you call these odd lots of candy at special or advantageous prices, did there come a time when the business of United States Candy expanded into something else?

A Yes.

Q What was that?

A Potato chips.

Q Is it the fact that Mr. Goldman or somebody connected with United States Candy came and talked to you on behalf of Interborough and/or Sportservice about the possibility of working out something having to do with selling or dispensing potato chips in the subways under Interborough's license?

A Yes.

Q Did you have that proposal from Mr. Goldman? Was he the one that spoke to you about it?

A Yes.

Q Did you give him a response?

A Yes.

Q Was the response affirmative?

A I told him that it sounded like a good idea but I thought that we would have to get the permission of the Transit Authority because it was not in the classification of candy.

Q Did you then see whether or not you could get the requisite permission from the Transit Authority?

A Yes.

Q And who participated in communications with the Transit Authority to see about that?

A I don't recall specifically whether Mr. Goldman and myself had a meeting with them or Mr. Goldman had a meeting separately.

Q One way or the other Mr. Goldman was involved?

A Yes.

Q And as a result of his activities if there was a question theretofore about whether your company Interborough could put potato chip machines into the subways that question was resolved and you were allowed to do so?

A That is correct.

Q And the contemplation of the arrangement about the potato chips was, among other things, that it would result in profits for Interborough, isn't that right?

A Correct.

Q And you were going to receive income on which you paid a share to the Transit Authority but the remainder belonged to you subject to whatever you had to pay United States Candy?

A Correct.

Q So it was an arrangement that contemplated at least three areas of income from the business itself, one to the Transit Authority, one to Interborough, and one to United States Candy, is that right?

A That is right.

Q Was there anything unlawful about that?

A No.

Q Was there anything wrong about that?

A No.

Q And Mr. Goldman, you knew at the time of the potato chip proposal, owned an interest in United States Candy?

A Yes.

Q When the potato chip proposal came up did you talk to Mr. Louis Jacobs and ask him whether you were permitted to do this?

A I didn't ask him -- I told him what had already been consummated. I told him -- in other words, after it was all approved I advised Mr. Jacobs that we were putting in potato chips and I told him I was enthused that this could do very well for Interborough News because this was a new item, a different item from candy.

Q And you made reports or had conversations in those years with Louis Jacobs on a fairly frequent basis, at least once a week?

A Yes.

Q Probably more often?

A Yes.

Q As a matter of fact, just so that I have the geography right in those years you were sitting on one floor of a two-story building, is that right?

A Yes.

Q And I take it that Mr. Jacobs, unless he was traveling or unless you were traveling,was somebody you saw every day in the normal course of the performance of your duties, is that right?

A I didn't necessarily see him every day. I was on one end of the office, one extreme end and he was at the other extreme end.

Q If you didn't see him every dav it was a normal routine that you would see each other to converse more or less as the needs of the business indicated, is that right?

A Yes.

Q And you were then, as you phrased it, I think, his assistant?

A Yes.

Q You were the man who helped him to do the things he had to do?

A Yes.

Q And also you had a regular schedule of reporting to him, did you not?

A The only regular scheduled reporting I had was the once a week meeting.

Q Didn't you have in the organization at that time periodic financial reports that were prepared so that

Mr. Jacobs and others would know how the various enterprises were doing?

A   Yes, but I did not get involved in financial statements.

Q   Did you get involved enough to be talking to Mr. Jacobs from time to time about whether this particular subsidiary was making money or losing money, doing better, doing worse?

A   Yes.

Q   That is what you talked to Mr. Jacobs about primarily, right, that is to say the results of your operational supervision of various of the subidiaries, isn't that so?

A   Yes.

Q   You told him all of the things that would be of significance to him in the course of his operation as owner of this business, right?

A   That is correct.

Q   And this man Louis Jacobs, he was not a 9:00 to 5:00 man, was he?

A   No.

Q   He was a man that spent limitless numbers of hours each and every day, Saturdays and Sundays, holidays and otherwise, attending to his business, isn't that right?

A Yes.

Q And you helped him in those various long hours to make sure that he knew as much as could be told to him about those businesses, isn't that right?

A No, I didn't spend the hours that he spent.

Q You spent fewer hours but your business and your job was to help him learn as much as he could that he wanted to know about the operation and success and problems of his various businesses, isn't that right?

A The businesses of which I had responsibility.

Q Yes, indeed, the ones for which you were responsible.

A Correct.

Q There came a time, as I think you testified, when something happened with respect to United States Candy and/or Goldman that led to a change, do you remember that?

A Yes.

Q Who was it who brought to your attention the circumstances of this change or difficulty, was it Mr. Goldman?

A Mr. Goldman.

Q Did he tell you that he had learned something which in substance shocked him and led him to want to do something different than had been done therefore?

A I don't recall specifically. I only recall that he had advised me he was dissatisfied with his two associates.

Q Well, let me see if I can refresh your recollection. Did he ever say to you in words or in substance that they or either of them, his associates in the ownership of United States Candy, had done something which was not proper toward him?

A I believe he indicated something to that effect in some way.

Q Something to that effect?

A Yes.

(Continued on the next page.)

(At the side bar.)

THE COURT: It is none of my business to direct the prosecution and it is none of my business to direct the defense but I am afraid you might be getting into an area where you might have problems. I don't know what this testimony is nor do I know what shocked him. Is it going to assist the defense to prove the man was associated with people who had done something criminal or something wrong or improper, whatever you want to make it? I am not doing anything except warning you, okay?

MR. FRIEDMAN: : Since we are at the side bar and since this is a matter that has already been gone into and is part of the 3500 material it just provides the stimulus for the change when he discovered that one of his co-venturers was getting a commission on purchases that he was making for U.S. Candy which were then sold and Goldman felt it wasn't fair and he said "I don't want to do business with that kind of man, I want to do it differently."

THE COURT: Okay, whatever it is.

(In open court.)

Q I think we are at this point, Mr. Zander, where I was going to ask you would it refresh your recollection if I suggested to you that you learned from Mr. Goldman that one of his co-owners of U.S. Candy had, according to Mr. Goldman, been taking for himself commissions with respect to candies that he had purchased for U.S. Candy which in turn was being resold to Interborough and that Mr. Goldman expressed to you that he thought that wasn't proper for that man to do, does that refresh your recollection?

A No, it doesn't. I only remember that he had indicated that they were doing something that was improper.

Q As a result of that, whatever the detail of it was, he said he wanted to make a change, did he not?

A Yes.

Q And what was the change that he said he wanted to make?

A He wanted to have the candy business diverted to a company called Jola Candy Company.

Q Did he tell you at that time who Jola would be or who would own Jola?

A I believe he only referred to it as his company.

Q It was going to be his company but it was not going to include Greenberg or Dechter any more, is that right?

A Correct.

Q It was perfectly clear to you as a result of what Goldman told you that in the future he wanted no more to do in a business way, having to do with Interborough, with Greenberg and Dechter?

A That only related to the candy.

Q The potato chips continued with U.S. Candy thereafter?

A Correct.

Q Focusing only on the candy business he made it clear that he didn't want to be associated any more with that business with those people, is that right?

A Yes.

Q And he made it clear to you that he wanted to take that over, as you understood it, you say, on his own behalf, is that right?

A Yes.

Q Through a company that he owned?

A Yes.

Q And that was Jola?

A Yes.

Q And you knew that as soon as he talked to you about it?

A Yes.

Q Jola was going to pick up that part of U.S. Candy's business with Interborough that touched upon candy?

A Yes.

Q Did you object to that?

A No.

Q Was there anything improper about that?

A No.

Q Was there anything wrong about it or unlawful about it?

A No.

Q You understood, did you not, that if this came to pass, as Mr. Goldman proposed to you and if Jola was able to carry on what was being proposed it would make profits?

A Yes.

Q And there was nothing wrong in your view with Mr. Goldman now alone, as you understood it, making profits as a result of his relationship to Jola and Jola's relationship to Interboro, is that right?

A Yes.

Q And once you had agreed to this change you passed the word out that it was being done, did you not?

A I did mention it to Mr. Jacobs.

Q You told him that U.S. Candy, which had heretofore been doing business with Interboro and in which Goldman had an interest was now not going to do any more candy business, is that right?

A Would you repeat the question, please.

(Question read.)

A That is right.

Q Did you tell Mr. Jacobs as well something to the effect that the reason U.S. Candy was going out of the picture, so far as candy was concerned, was because Goldman told you that his associates had done something that was not proper toward him?

A I don't believe I went into any detail with Mr. Jacobs on that.

Q But when you told him U.S. Candy was going out of the picture did you then tell him Jola was coming in?

A Yes.

Q Did you tell him whether Goldman had an interest in Jola?

A Yes.

Q And did you tell him that Goldman did have an interest in Jola?

A Yes.

Q And did Mr. Jacobs say "Wait a minute, you can't have that", did he tell you not to do it?

A No.

Q Did you tell Mr. jacobs what kind of business it was contemplated Jola would do with Interboro?

A I had told him that Jola was going to take the place of U.S. Candy doing the same type of business that U.S. Candy was doing.

Q And how about business involving candy deals that came in, was that going to be a part of its business as well?

A I only told Mr. Jacobs that -- I had told Mr. Jacobs what U.S. Candy was doing and the type of business they were going to be doing. I then passed onto Mr. Jacobs the fact that what U.S. Candy had been doing Jola was going to now do.

Q But at the time that you spoke to Mr. Jacobs about that was it the fact that it was also comtemplated that Jola would receive business from Interboro consisting of at least some of these candy deals?

A The candy deals on the same type of policy that U.S. Candy was operating, yes.

Q Candy deals that had theretofore been handled by Interborough directly. Was it contemplated when the change over was made from U.S. Candy to Jola that Jola would handle some of the candy deals that theretofore had been handled by Interboro directly?

MS. STRAUSS: Objection, not only does it call for the operation of the mind but it doesn't say whose mind,

Mr. Zander?

THE COURT: What he is really asking is did he tell Mr. Jacobs, is that Jerry Jacobs?

THE WITNESS: Jerry Jacobs -- no, Louis Jacobs.

THE COURT: Did you tell him about this entire setup?

THE WITNESS: No. At the initial discussion, the very first discussion with Mr. Goldman I understood that Jola was going to continue into the purchasing of this odd lot type of merchandise, merchandise that heretofore was not purchased directly by Interboro in the past.

Q So what you are saying to us is that you understood and the thing that you agreed to was that all Jola would do would be to take over the business of these odd lots, right, which had never been handled by Interborough before U.S. Candy appeared on the scene, is that right?

A At least to my knowledge, yes.

Q And of course this business of odd lots, that isn't something that Mr. Lynch had handdled because Interboro itself had never dealt with those things, had they?

A Not to my knowledge. I wouldn't know. In other words, Mr. Lynch could have bought odd lots in the past but without necessarily telling me but I didn't personally know, no.

Q Let me take a minute with you to see if I can find out something about the way this business ran. You had chewing gum machines, is that one kind of machine you had?

A Yes.

Q That was a very numerous kind of machine in relation to the total number of machines you had in the subways?

A Yes.

Q There were thousands of those machines?

A Yes.

Q And that was a regular item of your business which had behind it contracts with chewing gum suppliers?

A I don't believe so.

Q How did you get the chewing gum for the machines?

A Mr. Lynch ordered chewing gum but to my knowledge he had no contracts with any chewing gum companies.

Q Would you call the chewing gum material or merchandise standard merchandise for your operation?

A Yes.

Q As contrasted with that you also sold certain candies, is that right?

A Yes.

Q And the candies were bought, and you tell me whethe I am right about my statement in the question, as a result of people who were salesmen either for candy companies or for jobbers walking in to see Mr. Lynch and saying "Mr. Lynch, today I have a special on Clark bars or today I have a special on Mason Mints and I want to offer them to you at this price," is that the way that kind of business was handled?

A I don't specifically know how the business was handled on a local level. It's the normal type of business but specifically I don't get involved in how each local person handles the business, whether he calls them, they call him.

Q Whether he calls them --

A But it would be the normal type of business which would be a salesman comes in that represents a certain company and if Mr. Lynch thinks the item is okay, the price is okay he would be authorized to buy it.

Q And he would make deals for candy, right?

A Yes.

Q These were candy deals that he had to deal with or attend to as a part of his routine every day business?

A Correct.

Q And he did the purchases?

A Correct.

Q I want to know from you whether you -- and I want you to tell me this in terms of substance, even if the exact words aren't correct -- whether you ever told Lynch originally or instructed him originally to give the business of any candy company that came in with a new deal for candy to Jola Candy Company, Inc.?

A At what point? Is there a time? At any time you mean?

Q I am going to do it with you again, Mr. Zander. I want to know whether originally you ever told or instructed Lynch to give the business of any candy company who came in with a new deal for candy to Jola Candy Company, Inc.? In words or in substance did you ever say that or instruct it?

MS. STRAUSS: Objection, the witness already indicated that he doesn't understand what is meant by originally. Does he mean the first conversation, the first two conversations or the first month?

THE COURT: Let's try out for the first month.

A I did not make that statement the first month.

THE COURT: The first six months?

THE WITNESS: I don't believe I made that statement the first six months.

THE COURT: How about the first nine months?

THE WITNESS: No.

THE COURT: During the period of the first month did Jola Candy Corporation do any business with Interborough News Corporation?

THE WITNESS: If I may say so --

THE COURT: Yes or no?

THE WITNESS: Yes, they did. In other words, the first month -- from the time Mr. Goldman asked me to give or divert the business to Jola Candy Company we did, yes.

THE COURT: Then it happened on the first month then that you made some kind of statement.

THE WITNESS: But not that type of statement, sir.

THE COURT: What type of statement did you make?

THE WITNESS: I told them to give him a couple of accounts, to feed him a couple of more accounts.

Q In the first month after the changeover you told Lynch to give Jola and Goldman a couple of accounts or a few more accounts?

A A couple of accounts that we had previously done business with.

Q That means -- this is not the distressed merchandise account, right?

A Correct.

Q This is the kind of business, the kind of account that Lynch had taken care of himself frequently for Interborough before U.S. Candy or Jola was ever on the scene?

A Yes.

Q And you told Lynch to give that business to Goldman and/or Jola, right?

A Yes.

A That was unlawful?

A I don't know if it was unlawful or unethical.

Q Was it criminal?

A I can only explain what it was.

Q Just answer my question.

A I don't know the law as to what is criminal and what isn't.

Q Was it wrong for you to do that?

A Yes.

MS. STRAUSS: Asked and answered.

Q It was wrong.

When you told Lynch to do this did you say to Mr. Lynch, "Look,Mr. Lynch, I want you to give that man or that company a couple of the accounts you are handling but I am telling you it's wrong but don't worry about it"?

A I didn't tell him in those words.

Q Did you tell him in substance "Look, Mr. Lynch, I am telling you what you are to do, you give some of the business that you previously placed, give that to Goldman. I am telling you this notwithstanding that I know it's wrong to do this but nevertheless you do it", did you do that in substance?

MS. STRAUSS: These kinds of questions are in the nature of summation and argument.

THE COURT: I will permit it. Go ahead.

A Not in those words. If I may give you the words.

THE COURT: Go ahead.

A I told him I recognized this would be less profit for Interborough News because that additional profit would go to Jola because he could buy the same merchandise for a lesser price but I said I want you to do it because I feel -- well, at that first instance I think I merely advised him that after all, Goldman had been helpful to us.

Q Let me see. You said that this instruction if followed would cause Interborough not to make as much profit?

A That is correct.

Q That was the only thing that was wrong about it, is that right? Is that right?

A I don't know. I am only quoting. I can't define law.

THE COURT: No one is asking you to define law. What was in your mind?

THE WITNESS: What was in my mind was the fact that Interborough News while they would make a lesser profit and Goldman would make some profit from it, in my mind it was two things. My job would be made easier because I would continue to get the cooperation of the Transit Authority.

THE COURT: All right, hold it right there.

Q So although you knew that by the instructions that you were giving within the first month that Interborough's profits would be to some extent diminished you nevertheless told Lynch to go ahead because you thought that there was value that you either had or would receive from Goldman, is that correct?

MS. STRAUSS: Objection, that is not what the witness said. He doesn't restate his answer correctly.

THE COURT: I will permit it.

A That there would be value received for Goldman?

Q From Goldman, services he would perform or had performed.

A That who would receive value from Goldman? I would receive value from Goldman through a lesser headache on my part, yes.

Q That is to say that his activity would make your life easier?

A Correct.

Q And your life that we are talkingabout is not your personal life, it is not your social life, it is your life as an officer, as the top executive officer of Interborough News in relation to its business, isn't that right?

A That's correct.

Q You were giving some part of the profits away in order to have given to Interborough and to you as an officer something which you regarded as valuable, isn't that right?

A Yes.

MR. FRIEDMAN: Now I am ready, Judge.

THE COURT: All right, ladies and gentlemen, you can go to lunch, and enjoy it. Return at 2 o'clock.

(Jury left the courtroom.)

(Whereupon, a luncheon recess was taken to 2:00 p.m.)

AFTERNOON SESSION

2:15 p.m.

(In open court; jury present.)

JACK ZANDER, resumed.

THE COURT: Good afternoon.

CROSS EXAMINATION (Continued)

BY MR. FRIEDMAN:

Q Mr. Zander, I think before lunch we were talking about your conversations, your arrangements made within a month of the beginning of the relationship with Jola. My question to you now is, did you tell Mr. Lynch at or about that time within the first month of the beginning of the beginning of the arrangements with Jola that he should keep the arrangements quiet?

A No.

Q Do you have some doubt?

A When you say quiet, I wasn't sure when you say quiet --

THE COURT: What he meant was, did you ever tell him not to tell the Jacobs family about this?

THE WITNESS: I never specifically told them anything, no.

THE COURT: Did you tell them not to tell any of the other employees of Sportservice about this?

THE WITNESS: No.

Q There were from time to time in the regular operation of your companies auditors who came around, weren't there?

A At Interborough News?

THE COURT: Yes. Let's start there.

A None that I ever remember.

Q Let me understand something. Emprise was the parent company, right?

A Yes.

Q One of its subsidiaries was Sportservice?

A Yes.

Q Sportservice in turn had many local Sportservice state by state?

A Yes.

Q You also had Interborough which was a subsidiary of Sportservice, right?

A Yes.

Q Every year at least in this period of time you got a certified financial statement, did you, from an outside auditing firm?

A Yes.

Q That firm --

A Not, you mean for each operation?

Q No. The overall consolidated operation?

A Yes.

Q You got a certified financial statement?

A Yes.

Q Is that right?

A Yes.

Q Those accountants who, by the way, were they Peat, Marwick & Mitchell & Company?

A Yes.

Q These accountants would do whatever was necessary in order to satisfy themselves that they could give you a certified financial statement with respect to the income of the entire group of companies and its assets, is that right?

A Yes.

Q Even if they didn't literally audit each subsidiary company each year it is the fact that from time to time they would audit this subsidiary or that subsidiary in order to be sure that the total picture was correct, isn't that so?

A From the home office, yes.

Q They would make whatever field inspections were necessary in order to conduct themselves as they were obliged to conduct themselves as outside certified public accounts, isn't that so?

A They made spasmodic checks of not too many, very few they picked up, they picked here or there and I don't recall them ever picking Interborough News.

Q Did you ever tell Mr. Lynch, did you see anybody from Peat, Marwick, be sure you keep away from them any information with respect to Jola?

A No.

Q Did you ever tell the bookkeeper or any other accounting personnel that worked at 14th Street and 8th Avenue that under no circumstances should that person allow anybody in the organization to see any pieces of paper that would reflect on the fact that Jola did business with Interborough?

A No.

Q That goes for the entire span of time that we are talking about, from 1967 through 1974, you never instructed anybody to keep secret or covert the fact that there was a Jola and that it was doing business with Interborough, isn't that right?

A There was no secret about Interborough News doing business with Jola.

Q Yes. My question, did you ever tell anybody to keep that fact a secret?

A That Interborough was doing business with Jola? No.

Q Did you ever tell anybody to keep a secret what kind of business Jola was doing with Interborough, that is to say what kinds of material it was selling and at what rpcies?

A No.

Q I remember that in your direct examination at least once, possibly more than once you said something about the fact that as you viewed it with requests that you say were being made to you to increase the number of accounts that Jola was going to handle and sell to Interborough,that you became concerned about the possibility of being detected? I will use the word hazard, do you remember that testimony?

A Yes.

Q Is that your testimony that you were concerned?

A It was my testimony that I told Lynch that.

Q Did you tell Goldman that too?

A Yes. I also told Goldman that. I am sorry, I told Goldman that, not Lynch.

Q You told Goldman when he asked you to see to it that more business was done by Interborough with Jola that you were concerned because there was a hazard or danger of being detected, is that the substance of it?

A That is correct.

Q You were afraid of that?

A That's what I told Mr. G[illegible]dman.

Q Yes. You were fearful that if you were detected that would be very bad consequences to you in Buffalo, is that correct?

A That's what I told Mr. Goldman.

Q That is what was in your mind, that's what you believed, isn't it?

A Not completely.

Q Just a moment. Are you telling me now that what you told Goldman wasn't true?

A Not --

Q Just answer that question, please.

A I can't answer it with a yes or no.

Q All right. Let's put the question aside.

MS. STRAUSS: Your Honor, can't the witness be allowed to answer the question as he chooses?

THE COURT: No. He withdrew the question.

Q What was there from your understanding, Mr. Zander, if the business between Interborough and Jola was increased that might have brought that to the attention of other people in the organization so to speak?

A There was remote, therewas the remote possibility by accident or otherwise that someone might pick up the point of Jola charging for example 4-1/2 cents, I am using it as an example for a Clark bar. That person might have noticed invoices coming from some other area for the same Clark bar for four cents. They might come back and say, why is Jola charging 4-1/2 cents for a Clark bar where this company is charging four cents. That is the remote possibility.

Q That was a possibility which from your knowledge of the way things worked existed at all times because the company maintained and kept copies of all the invoices showing the charges for the merchandise that it bought, isn't that so?

A They kept records, yes.

Q The records, withdrawn.

The people who sold previously to Lynch at Interborough, they knew that there was a change in the moethodof operation too, didn't they?

A Yes.

(Continued on next page.)

Q All these candy salesmen that came around to Interborough and Lynch day after day after day and sold him or tried to sell him candy on the certain deals or arrangements, they suddenly learned that there was going to be a new way of doing things, right?

MS. STRAUSS: The witness never testified that anybody came around day after day. He said he didn't know how it worked.

THE COURT: He said that he assumed that people came around or that the local people would contact the buyers day after day after day after day. Other than that, answer it.

A May I try to explain this?

Q I would like to have an answer to my question, if you can't recall it I will rephrase it for you.

A Rephrase it for me.

Q Yes, indeed. Did not the people who sold candy and had sold candy to Interborough and had dealt with Lynch before Jola emerged, didn't they know automatically after this new arrangement was made that something different had happened?

MS. STRAUSS: Objection as to what this witness can estimate somebody else might have known.

THE COURT: All right. Change the question to would they have known.

Q Mr. Zander -- would they have known of the new arrangement?

A Not necessarily.

Q Just a moment now. Each one of these people whose account was effected by this change instead of now selling directly to Interborough was going to sell to Jola, isn't that right?

A Yes.

Q He was going to come see Mr. Lynch or Mr. Lynch was going to come see him and he and Mr. Lynch would strike a deal to buy some candy but the change would be that Lynch would tell him, look Mr. Clarke Bar, if I may use that phase, don't send this bill to me, Interborough, any more, you send the bill for the price that I negotiated with you to Jola. Wouldn't everyone who was subject to that change of procedure know that that change had taken place?

A They would know but there would be no significance to that question.

Q I didn't ask you about significance. I certainly asked you whether they would know.

A I can't tell what someone else would know or realize.

Q Would they know that the procedure which they had previously followed before Jola was in existence was now changed?

MS. STRAUSS: Objection. Asked and answered. The witness said he can't estimate.

THE COURT: Yes, I agree with you.

Q Mr. Zander, did you ever give instructions to Mr. Lynch to tell the candy suppliers involved that they should keep it quiet or keep it secret that they were billing to Jola instead of to Interborough?

A No.

Q Did you personally ever give any instructions to any of those candy suppliers?

A No.

Q I want to ask you this question and what I read to you are certain words and I want you to tell me whether you ever said this in words or substance to Mr. Lynch.

MS. STRAUSS: I believe it would be proper to let the witness know when and where he is going to be confronted.

THE COURT: At any time, at any place.

Q Did you initially instruct Lynch in relation to Jola's emergence to do anything Goldman wanted?

MS. STRAUSS: Objection to the vagueness.

THE COURT: All right.

A The answer is no.

THE COURT: Did you ever?

THE WITNESS: I never gave him carte blanche, no.

Q Did you ever say anything to Lynch of the substance or approximately to the effect that whatever Goldman wants to do or tells you to do, you are to do?

A No. Not unequivocably, no.

Q Did you make that statement to Lynch having to do with certain areas or certain activities?

A I told Lynch to cooperate as much as he could with Mr. Goldman but if there was something that he felt was utterly wrong to tell me about it and I would make the final decision.

Q Did you ever tell Mr. Lynch in words or substance that your company had Goldman to thank for its good fortune at the Worlds Fair?

MS. STRAUSS: Your Honor, I would like to know what counsel is reading from.

THE COURT: I wouldn't care whether he is reading from a comic book. Go ahead, answer the question.

A I don't believe I remember telling him,I don't recall telling him that specifically.

Q I want it again understood, I am asking whether in those words or of that substance.

A I really don't recall. It is possible, I just don't recall it specifically.

Q Did you ever --

A In anything.

Q Excuse me.

A I don't remember mentioning Mr. Goldman as it pertains to the Worlds Fair specifically, but it is possible. I just don't recall it.

Q Did you ever say to Lynch in words or substance that he should look upon or consider that Goldman was Interborough News' public relations man?

A Yes.

Q Did you ever say to Zander, to Lynch, I'm sorry, in words or substance that Goldman was entitled to the arrangements that were made between Jola and Interborough?

A I told him that at one point, yes.

Q What did you tell him?

A Initially, I told him that I felt Goldman was entitled to it because he had been helpful in the cooperation we were getting from the Transit Authority. I believe I told Mr. Lynch that he surely must recognize that certain little things that became difficult were now coming a little easier, little day to day things of transferring machines from one point to another, things like that.

THE COURT: You said this, I am using your word, initially, what do you mean by initially?

THE WITNESS: That was one of the things I told him the early part of February.

Q Of 1967?

A Yes.

THE COURT: Where?

THE WITNESS: In Mr. Lynch's office.

THE COURT: New York City?

THE WITNESS: Yes, New York City.

Q There was some testimony, Mr. Zander, on the direct examination, about Goldman's officership in Interborough, do you remember testifying on that?

A Yes.

Q Is it correct that your testimony was and is that this was Goldman's idea?

A He had asked, he had thought it would be a good idea.

Q He importuned you, he asked you to arrange it that he become an officer of Interborough?

A Yes.

Q It was not your idea?

A To the best of my recollection, it was his idea.

Q Do you have any doubt?

A To my best recollection it was his idea.

Q Do you remember whether at the time, whether that time was that he became an officer, that this was just one of those other occasions when he said to you in substance, hey, Mr. Zander, or Jack, I really think I would like to be an officer of Interborough, would you please arrange it, was that the way generally you recall it happening?

A He had mentioned it on perhaps one or two occasions during that year.

The opportunity came up when we changed the number of officers and directors in 1967, because one of the vice-presidents was resigning and it was that representative, that represented a good time to replace that person with Mr. Goldman.

Q Your testimony is that sometime in 1967 for the first time Mr. Goldman raised this request of you?

A I can't specifically say when. It had been mentioned, whether it was in early '67 or some time, it was never made as a big point. He mentioned it would be a good idea, it would be a good idea for the benefit of Interborough News.

Q What did you say when he raised this as a good idea?

A I said let me work on it, let me see what we might be able to do.

Q There was a man named George Booth, right?

A Yes.

Q George Booth was originally one of the owners of Interborough?

A That is correct.

Q He and a man named Meyer owned the company?

A Yes.

Q When I say you I mean Sportservice. You bought the company from Booth and Meyer?

A Yes.

Q Did you give them contracts to remain on in the management?

A I didn't participate in contracts but I was aware of the contracts.

Q They had as a part of the deal where their ownership interest was acquired, gotten contracts to remain in the employ of Interborough and helped to run its affairs, isn't that right?

A Yes.

Q Did there come a time when the company, I'm talking about Interborough, after you people had taken control of it, after you controlled its board of directors and its actions, that you decided that the headquarters of the company should be moved from New York to Buffalo?

A From New York to Buffalo?

Q That's my question.

A The main headquarters for all the operations are in Buffalo. We didn't move Interborough to Buffalo no different than we moved all the hundreds of operations to Buffalo.

(Continued on the next page.)

Q Didn't there come a time, Mr. Zander, when a determination and a decision was made over the protest of Mr. Booth to the effect that hence forward his center of operations should be out of Buffalo?

A Oh, we asked him to work out of Buffalo.

Q What did Mr. Booth say?

A He didn't want to.

Q He said that when he had made his arrangements at the time of the purchase of his interest it was contemplated that he would be able to continue to live in New York and work out of New York, isn't that what he said?

A I don't recall. It could be. I don't recall specifically. I only know that when we asked him to he indicated no, and that wasn't the intent but I don't remember any of the details.

Q And whatever his part was, you people in Buffalo didn't agree with him, right?

A Yes.

Q And you told him that he either was going to come up to Buffalo to work or he was finished, do I have that right?

A No. We would have to take it another step. In other words, Interborough News headquarters did move.

They had offices someplace on the 10th floor of some building and we, for the benefit of economy, and that is where all the executives were, but we had all the executives working right in the subway and that included Mr. Booth.

Q But I am talking about the separate problem of the decision that Mr. Booth, as you have acknowledged, should work out of Buffalo, do you remember that?

MS. STRAUSS: Objection. We have been at the cross examination for several days now. The relevancy of this --

THE COURT: I am wondering myself. We will find out shortly where we are going.

A I don't recall that specifically. I don't recall that particular thing. I know we once asked and he turned it down and I don't think we pursued it because we followed a different course after that. That is why I know we didn't pursue that course.

Q I show you what is Defendant's Exhibit V for identification, Mr. Zander, and I ask you whether you can identify that?

A Yes, I remember this.

Q That is a document that you saw at or about the time it is dated, is that right?

A Yes.

MR. FRIEDMAN: I offer it in evidence.

MS. STRAUSS: I object on the grounds that it is hearsay.

THE COURT: Counsel, she is right. It is hearsay. However, Mr. Zander, on or about September 22, 1967 did you recommend to Mr. Murnighan or Mr. Schutrum that George Booth be removed as an officer and director of Interborough and its subsidiaries?

THE WITNESS: Yes.

THE COURT: You did. And in that connection you told them that even though the annual meeting was not being held until April, according to the corporate charter, that he could do it forthwith or try to do it forthwith, right?

THE WITNESS: That is what our attorneys told me I could do. I would not know if I could do it.

THE COURT: If you had any question as to the effect of doing it he was to get proper notice, is that correct?

THE WITNESS: Yes.

THE COURT: At that time did you suggest that Mr. Irving Goldman replace Mr. Booth as a director and vice-president of Interborough?

THE WITNESS: Yes.

THE COURT: And you told them that if they needed Mr. Goldman's address to contact you and you would supply it to the attorneys, right?

THE WITNESS: Yes, your Honor.

THE COURT: And you suggested that there was a certain element of urgency involved in that, didn't you, or did you? Do it right away kind of thing?

THE WITNESS: If I did, I don't remember at this moment why. There may have been a reason but I would not remember why.

THE COURT: Do you remember telling them that you wanted Mr. Goldman to avail himself of the title of vice-president and director within the near future?

THE WITNESS: If there was an urgency that would not have been the reason for the urgency.

THE COURT: Take a look at this piece of paper. Does it refresh your recollection?

THE WITNESS: What we wanted to do --

THE COURT: Does it refresh your recollection on my question? The part right here.

THE WITNESS: No, your Honor, it does not refresh my recollection as to the urgency.

THE COURT: But you did it outside of the usual annual meeting?

THE WITNESS: Yes.

THE COURT: And you also requested that undated resignations for Mr. Goldman resigning as director and vice-president are to be prepared and you were going to take care of having them signed, right?

THE WITNESS: Yes.

THE COURT: And you took that to New York, say, a week following September 29, 1967, is that correct? Take a look. Does that refresh your recollection?

THE WITNESS: Yes, I know I had them prepared in my office and indicated that the next time I come to New York I will take them down because he had already been made an officer. This was merely a resignation.

THE COURT: I understand, but you made him an officer before that?

THE WITNESS: That is correct, your Honor.

THE COURT: Fine.

Do you want the hearsay in or out?

Q With respect to the document that the Judge has been showing you, Mr. Zander, you do recall that you received it at or about the time it is dated, is that right, a copy of it?

A I recall it now that I have seen it.

Q Is there anything about it that in reading it --

and I want to give you an opportunity to read it as carefully as you want -- that is at a variance with your present recollection of the events?

A What is that word, variance?

THE COURT: Is there anything in there that is different in your present recollection of these matters?

THE WITNESS: No.

Q In other words, what you see in there and what you read in that memo is the best recollection that you have of the events that are described, is that right?

A Yes, it is.

MR. FRIEDMAN: I renew my offer of the documents, if your Honor please.

THE COURT: You renew it as past recollection reported, is that correct?

MR. FRIEDMAN: As that --

THE COURT: Present recollection.

Do you want to object on the grounds of hearsay?

MS. STRAUSS: The testimony is coming in and I don't see why the document should. It is not the witness' statement. He never wrote this.

THE COURT: He doesn't have to write it. Mark it in evidence.

(Defendant's Exhibit V received in evidence.)

xx

MR. FRIEDMAN: May I read it, Judge?

THE COURT: Sure.

Q Before I do read it who is Mr. Murnighan?

A I don't remember the name. He must be a part time attorney.

Q And who is R. Schutrum?

A I have to assume he was a part time attorney. We had lots of them.

Q And Mr. Almasi we already know?

A Yes, the full time attorney.

THE COURT: When you say full time attorney you mean in-house counsel, right?

THE WITNESS: The part time ones were also in-house but they were sometimes two days a week, off and on,and they turned over quite a bit.

(At this point Defendant's Exhibit V in evidence was read to the jury by Mr. Friedman.)

(Continued on the next page.)

Q Mr. Zander, you had a discussion with Mr. Almasi about whether or not Mr. Goldman should be paid a salary or any compensation by Interborough for becoming its vice president and director, did you not?

A I don't remember any such discussion.

Q When Mr. Goldman became vice president and became a director of the company did he get a salary?

A No.

Q Did he get any compensation from the company for his service as officer and/or director?

A No.

Q Did he ever receive any money for those functions?

A No.

Q I think in your direct testimony, Mr. Zander, you spoke about something that happened in 1968 having to do with the renewal of your Transit Authority contract, do you remember that?

A Yes.

Q And if I understand the substance of what you said was that you had some communications with the Transit Authority and you decided to have a certain kind of renewal and you were given leave or there was some kind of a reservation to come back and ask for an adjustment later on in the event that certain things happened, is that right?

A That is correct.

Q And what you experienced was a certain erosion of your profit picture in the company?

A I was contemplating that possibility based on certain facts of the future.

(Defendant Exhibit W was marked for identification.)

Q I show you Exhibit W for identification and ask you whether you can identify that.

A Yes.

Q What is it?

A It was a request for some type of rental relief in view of certain anticipated union increases.

Q Is that a letter that you sent to Mr. Wasserberger at the Transit Authority?

A Yes.

MR. FRIEDMAN: I offer that document in evidence.

MS. STRAUSS: No objection.

THE COURT: Mark it in evidence.

(Defendant's Exhibit W was received in evidence.)

MR. FRIEDMAN: May I read it, Judge?

THE COURT: Sure.

(Defendant Exhibit W in evidence was read to the jury by Mr. Friedman.)

Q Did you compose that letter?

A Yes.

Q Was it in every respect that it makes any statement of fact true?

A Yes.

Q Did it represent your honest belief at the time with respect to increased costs that you anticipated the company would inquire over the period indicated?

A Yes.

Q Did it indicate in your honest belief and opinion the grounds for your entitlement to have a change or reduction in the revenue arrangement that existed with you and the Transit Authority at that time?

A Yes.

Q What happened, Mr. Zander, with respect to your request for relief at that time?

A The major request was turned down. The only thing they did was clean up -- the only thing they really did was clarify the langage of the agreement which in dollars and cents meant little but it clarified the agreement which was hard to understand but the relief in dollars and cents was negligible.

Q You believed that you were entitled to the relief but you didn't get it, is that right?

A That is correct.

Q Among other things did you ask the Transit Authority at that time at least to agree and to make a record of the fact that you would have a right some time later to come back and ask for an adjustment?

A Yes.

THE COURT: You said that the effect of the agreement was negative. What does that mean?

THE WITNESS: Are you asking me, your Honor?

THE COURT: Yes, you are the one who said it.

THE WITNESS: It was negative in the effect that we did not get any money relief. The only relief we got -- it wasn't relief. There was an ambiguity in the language and they did clean up the language in an amended agreement which if it gave any relief at all it was or would have been very minor depending upon sales and so forth but it was very minor relief.

Q Whatever relief you got at that time, Mr. Zander, you were entitled to, is that right, in your opinion?

A Yes.

Q You just didn't get enough relief?

A That is correct.

Q I think that you identified in the course of your testimony a literal amendment to contract that was signed.

A Yes.

Q Do you remember who signed that on behalf of the Transit Authority?

A I don't recall. I would have to see it.

Q Let me show you Exhibits X and Y and tell me whether these are letters that you either sent or received at or about the dates they bear.

A Yes.

MR. FRIEDMAN: I offer those two letters in evidence.

MS. STRAUSS: May we approach the side bar?

(In the robing room.)

MS. STRAUSS: I am sorry not to have an immediate answer to these things but as defense counsel learned there was a pile of documents from the Transit Authority he would be offering and I don't have copies to bring it out. As to this we have no objection.

THE COURT: As to X.

MS. STRAUSS: Yes. But, however, as to Y I object to documents coming in that were made by other people simply because this man received it. He can authenicate it but it is not his statement. We don't have the witness in here. As to any particular document I object generally to the procedure of documents coming into evidence that were made by other people having it come through this witness just because he happened to receive a copy of it.

THE COURT: This is addressed to Mr. J. Zander and amends the agreement between the Transit Authority and the Interborough News Company and you object to that going in? Why?

MS. STRAUSS: Because I know the defense counsel has a pile of documents some of which were not made by this witness. They are hearsay and they are all going to start coming in this way.

Mainly it is not the content of this particular one but I have a firm objection to using one witness to get hearsay of all sorts from other people.

THE COURT: Where is Mr. S.R. Wasserberger?

MS. STRAUSS: WE have a letter from his attorney afterwe served a subpoena upon him and we received a letter saying he would take the Fifth Amendment if he were called if we were not willing to give him immunity. Defense attorneys have agreed that that would be sufficient rather than calling him.

THE COURT: Do you agree?

MR. FRIEDMAN: We have a stipulation. We have agreed that he doesn't have to be called to articulate before your Honor because I think Miss Strauss has the letter.

If I may say, the letter which is J is not offered for the truth of what it says. It is offered to show that Mr. Zander, who is the witness on the stand, received that communication from Mr. Wasserberger. The same thing is true about this document. This one is not objected to.

MR. FRIEDMAN: I am not leaving with any extra burdens. I am not offering it for the truth of anything but only for the fact that it was sent or received.

THE COURT: That is enough as far as I am concerned.

MS. STRAUSS: Very well.

(Continued on next page.)

pm (In open court.)

THE COURT: Mark X and Y in evidence.

(Defendant's Exhibits X and Y were received in evidence.) x

Q Before I read X and Y, I will ask you this, apart from whether outside auditors like Peat, Marwick came around to Interobrough periodically to do a review or audit of the financial operations of that subsidiary, whether in Buffalo or in New York, you had internal auditors, didn't you or accounting people whose job it was at least once a year to prepare financial statements for every single subsidiary, isn't that so?

A Are you referring to outside auditors?

THE COURT: Inside.

THE WITNESS: Inside.

A They were done on a machine.

Q Were they done by machine under the supervision of accountants or otherwise, didn't you as a matter of regular routine get financial statements that showed what the particular subsidiary, the one I am interested in right now, Interborough, was doing in a given period financially?

A Yes.

Q Let's say you had a profit and loss statement periodically for Interborough?

A Yes.

Q How often did you have such a profit and loss statement?

A I believe I reviewed them, those yearly. We had yearly.

Q Did you have interim ones every month, as well?

A We didn't have, we had statistics but not profit and loss statements.

Q Statistics. Did you have statistics,for example, which told you what the results of operations for Interborough was let's say for the month of August this year as compared to the month of August last year?

A Yes.

Q And compared to the month of August the year before?

A Yes.

Q And these statistics, this came out of a machine in some way, is that what you are telling me?

A No. They didn't come from a machine. That was done if I recall by hand, by the statistics department.

Q Did it give information,for example, with respect to how much the sales of Interborough were in the month?

A Yes.

Q All right. You can compare the sales in that month against the same month a year ago [illegible] other month that you wanted to, I could have, yes.

Q It was available to you?

A Yes.

Q It was available to every other officer who had anything whatever to do with the operations of the supervision of operations of Interborough, isn't that so?

A Inside the Buffalo office, you mean?

Q Inside the Buffalo office, right.

A Yes.

Q It also showed, did it not,as one of the very important items in which everybody was interested after you reported the sales it told you the cost of goods sold, didn't it?

A Yes.

(Continued on next page.)

Q That was something that you could compare one month to another month to the same month a year ago, or make any comparison you wanted, isn't that right?

A Yes.

Q As a matter of fact, didn't those financial statements show you on a monthly basis not only the absolute dollars of sales and the absolute dollars of the cost of the goods, but state them in terms of percentages, that is to say what the percentage of cost of goods was to sales?

A I don't remember if it said that. It could have been calculated easy enough.

Q Anybody could have calculated that and anybody including Mr. Louis Jacobs or Mr. Max Jacobs or Jerry could by taking those financial statements that were prepared and circulated in Buffalo have determined whether there were differences or changes in the cost of goods sold as a percentage or in relation to the selling price, is that correct?

A Yes.

MS. STRAUSS: Objection. It is compound, it has the witness speculating on could other people do this. These kinds of questions I object to.

THE COURT: He already answered. I will accept it.

Q May I read, Judge, Exhibits X and Y?

THE COURT: Yes.

Q Exhibit X is on the letterhead of Interborough News, with the usual Main Street address in Buffalo, dated September 23, 1968, and it is addressed to Mr. S. R. Wasserberger, New York City Transit Authority, 370 Jay Street, Brooklyn, New York 11201.

"Dear Mr. Wasserberger, this will acknowledge receipt of the executed agreement amending our present contract V-3-A for which we would like to thank you at this time. We would also appreciate at this time a letter of confirmation from you as to that which we discussed and which was agreed upon as it pertains to the rights of Interborough News Company to reopen negotiations for possible rental adjustments in April, 1970 which is the time that we will have completed negotiations for the new labor agreement which would be effective for a three-year period beginning with April 1st, 1970. I believe you will recall that it was pointed out that we believe we will be required to increase our rates substantially as would be reflected by the present economy over the new three-year period commencing with April, 1970. We would then like to be able to review whatever hardships may be involved with the new labor agreement so that you in turn can give whatever considerations possible for relief to us should we require it. Thank you for your fine cooperation, very truly yours, Interborough News Company by J. Zander,"signed and typed.

On September 27, 1968 which was four days after the letter just read, Exhibit Y is a letter addressed to Mr. J. Zander, Interborough News Company, Buffalo.

"In answer to your letter of September 23, 1968 the following understanding is agreed to: If and when the contractor enters into a new labor agreement with its union (present labor contract expires March 31, 1970), the contractor may request that the terms of the contract be reviewed if it finds that the new labor agreement seriously effects its gross profits."

That is signed by S. R. Wasserberger, Director of Concessions of the Transit Authority -- indicated to be signed by.

Now after those --

THE COURT: Mr. Friedman, do you want to finish off this area right now?

MR. FRIEDMAN: If it is fine to break now, I will break.

THE COURT: You had discussions with Wasserberger about this, is that correct?

THE WITNESS: Yes.

THE COURT: Was your labor counsel there at the time you had those discussions?

THE WITNESS: No.

THE COURT: Who was there?

THE WITNESS: Myself and Mr. Wasserberger, I believe Mr. Goldman.

THE COURT: All right. We will take a break right now.

(Recess.)

(Jury leaves courtroom.)

(Continued on the next page.)

(In open court.)

THE COURT: Continue.

BY MR. FRIEDMAN:

Q Mr. Zander, after Mr. Goldman became an officer and director of Interborough in October, 1967 did he continue from time to time to render assistance and cooperate with you in the operation of the company?

THE COURT: I think I know what you meant to ask but it didn't come out right.

Q After Mr. Goldman became an officer and director of Interborough in October, '67 did he continue as theretofore to assist you and to render a assistance in connection with the operation of Interboro?

A Yes.

Q In connection with the business of naming Mr. Goldman as a director is it the fact that ordinarily the directors of the subsidiaries of the Emprise group were generally speaking, insiders, if I make my question clear to you?

A Generally speaking yes. There were other exceptions.

Q If there was to be a situation which called for an exception, is that something that you would ordinarily speak about in the company to people of your level or higher before you went ahead and did it?

A Yes.

Q Focusing then on Mr. Goldman is it not the fact that before you gave instructions to Mr. Almasi and the part-time lawyers to effectuate Mr. Goldman's designation and his election as a director and officer respectively, that was something that you discussed either with Mr. Jacobs or one of the people of a level at least as high as yourself in the Emprise family?

A I don't specifically recall whether I had and I wouldn't necessarily have to. We didn't put that type of importance on making someone a vice president or a director. I had done it in the past without telling Mr. Jacobs.

Q Is it your testimony that ordinarily this would be something that you would at least report to him?

A Sometimes, yes, sometimes, no.

Q Did Mr. Jacobs from time to time as he spent these long hours attending to his business interest, look at things like minutes of a meeting of shareholders,of directors?

A I would not know that.

Q Focus if you will on the month of October, '67, Mr. Sabbatino was one of your company officers, was he not?

A Yes.

Q He knew who Mr. Goldman was, didn't he?

A I am not sure if he knew who Mr. Goldman was.

Q Wasn't Mr. Sabbatino as of that time a director of Interborough News Company?

A Yes.

Q Didn't Mr. Sabbatino vote for Mr. Goldman to become an officer of the company?

A Yes.

Q Therefore I ask you, did not Mr. Sabbatino know or have some information from somebody concerning who it was that he was electing as an officer of the company?

A I thought you meant had he met him or knew him.

Q I am sorry if you had that misunderstanding. I want to know simply whether Mr. Sabbatino was told or had already learned even if never met Mr. Goldman, who Mr. Goldman was?

A Yes.

Q You had talked over the course of the years since you people had taken over Interborough, with Mr. Sabbatino on numerous occasions about Mr. Goldman's activities in this connection or that connection with Interborough, isn't that

right?

A Yes.

Q Mr. Sabbatino knew that Mr. Goldman owned Jola, did he not, or that his daughters did?

A No. I don't believe so.

Q Just the fact that he owned it or that his daughters did?

A I don't -- I don't remember specifically telling him that he owned Jola or that his daughters did. The only thing I would have indicated is he was a friend of ours connected with Interborough News. I don't specifically remember ever saying to him he has something to do with the company called Jola, I don't remember that.

Q Do you remember ever talking about Jola in Buffalo, did that name ever cross your lips in Buffalo?

A Yes.

Q Well, in what connection, what conversations did that name cross your lips?

A I would go to the voucher department from time to time and for example Mr. Goldman would tell me some of his payments were coming up slow, they weren't coming fast enough.

I would go to the vouching department and say, "Could you push Jola invoices a little faster, they are not coming through. They are three or four weeks behind, can you see what you can do because they are short of funds".

Q Did you say on any of those occasions, "Listen, the way I know this is because Mr. Goldman called me from New York and these things aren't being paid promptly?"

A I can't be sure that I would have specificially said Mr. Goldman called me to tell me that Jola was -- I do remember going from time to time to the voucher department and telling them that I would like to see some of the Jola invoices expedited.

Q Of course, the invoices or the payments for Jola invoices were sent to Goldman's address, isn't that right?

A Yes.

Q Of course you had a secretary or somebody who did typing for you from time to time who typed letters to Goldman whenever you wrote to him who also sent those letters to the same address, isn't that right?

A Generally, my secretary merely made out the envelope and gave me the envelope and I mailed special things to him. The normal voucher department I would merely send out to Jola Candy Company at the Washington

Street address, they would not be directing it to the best of my knowledge to the attention of Mr. Goldman, it would be Jola Candy Company, and the Washington Street address.

Q The fact is that in the records of your company and to the knowledge of personnel in your company Jola had the Washington Street address, and Mr. Goldman personally had the same, literally the same address, isn't that so?

A Yes.

MS. STRAUSS: Objection to the compound question.

THE COURT: He already answered.

(Continued on next page.)

Q How about Louis Almasi, did you tell Mr. Almasi or did he know by October, 1967 who this Mr. Goldman was that was going to be elected a vice-president and director of Interborough?

A Only that I would have told him that he was a friend to Interborough News Company and to our advantage of him as an officer.

Q Did you tell Mr. Almasi why Mr. Goldman was doing this philanthropic work out of friendship alone?

A No.

Q Did you mention anything to Mr. Almasi about Jola?

A No.

Q He never heard of it as far as you know or heard?

A Not to my knowledge.

Q How about the accounting department, did anybody at the accounting department know the name Jola?

A Yes.

Q Do you remember that anybody in the accounting department got a call from Mr. Goldman asking about payments that may have been held up that were due to Jola?

A No. To the best of my knowledge whenever payments were slow in coming it was Mr. Goldman who called me.

Q You went to the accounting department and they took care of it?

A Yes.

Q How about Mr. Geckler, did he have some acquaintance, whether he met him or not, with Mr. Goldman or who Mr. Godlman was before the election of Mr. Goldman for the board of directors and his election as an officer?

A I don't think so.

MS. STRAUSS: Objection.

THE COURT: He said no.

MS. STRAUSS: Your Honor --

THE COURT: He said he didn't think so. Let it stand, go ahead.

Q When the time came to have this election there was a board meeting, wasn't there, Mr. Zander?

A If there was, I don't recall it, there may have been, but I don't recollect it.

Q Do you recollect whether Mr. Geckler was on the board at that time?

A I didn't recollect it at the time until I was shown papers recently that showed him as an officer.

Q Why were you shown such papers?

A The United States Attorney showed me some papers.

Q When?

A To refresh my memory. In the last couple of weeks.

Q These papers that you were shown refresh your recollection that Mr. Geckler was a director?

A They refreshed my recollection that he could very well have been a director because he was one of the semi-executives.

Q Semi-executives?

A He was not the top executive. In other words, he wasn't an officer, he was an officer of very few companies. In other words, he was not a top echelon executive. He is what I would term a semi-executive.

Q He wasn't in your league?

A That is correct.

Q All right. Would you take a look at Exhibit Z and tell me whether you can identify that?

A Yes.

Q Do you know what they are?

A It is a notice of a board, minutes of a special meeting.

Q Of shareholders?

A Yes.

Q And what else?

A Of the board of directors.

Q All right. These are minutes and notices with respect to Interborough, is that right?

A Yes.

Q With respect to action taken in October, 1967, is that right?

A Yes.

MR. FRIEDMAN: If your Honor please, I offer them in evidence.

MS. STRAUSS: No objection.

THE COURT: All right. Mark them in evidence.

(Defendant's Exhibit Z received into evidence.)

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Q Of course the minutes of the board meetings, the minutes of shareholders meetings, those are a matter of record, aren't they?

A Yes.

Q They are books that companies keep, vinyl covers that keep and maintain and preserve records of meetings like that, isn't that a fact?

A I believe so.

Q In your company at Emprise in Buffalo you had a whole section of people who were just in charge of keeping these records of your various subsidiaries in good order, isn't that so?

A Yes.

Q One of the reasons he did that was because you knew that from time to time people from taxing authorities, people from State Liquor Authorities, people from various government agencies would come in and want to go through your books and records and check them, isn't that so?

A Yes.

Q You lived under the knowledge, the certainty that what was in your books of this kind was like an open book, something that couldn't be kept secret?

A That is correct.

Q All right.

MR. FRIEDMAN: May I read the portions of Exhibit Z, Judge?

THE COURT: Yes.

Q On the date October 7, 1967, "Called by notice," it says, "A special meeting of the stockholders of Interborough News Company will be held on Thursday, October 26, 1967 at 10:00 a.m. at the offices of the company, 703 Main Street, Buffalo, New York. The purpose of this meeting is for the purpose of electing new directors. A special meeting of the board of directors of Interborough News Company will be held on Thursday, October 26, 1967 at 10:30 a.m., at the offices of the company 703 Main

Street, Buffalo, New York. The purpose of this meeting is for the election of new officers of the company."

That is signed Interborough News Company, Jack Zander, President. The second sheet is entitled, "Minutes of the Special Meeting of Stockholders of Interborough News Company."

Then it begins as follows:

"Held at 703 Main Street, Buffalo, New York, on the 26th day of Octiber, 1967, at 10:00 a.m."

"The secretary noted that the meeting was called by a notice to stockholders dated October 7, 1967, signed by Jack Zander, President. The president of the company directed that the secretary attach a copy of the notice to these minutes. The president then noted that the purpose of the meeting was for the election of new directors. Upon motion duly made, seconded and carried the following resolution was adopted, that the board of directors of Interborough News Company consists of Jack Zander, C. Sabbatino, Louis Z. Almasi, Howard Geckler, Irving Goldman, the president further noted that the executive committee of the board of directors remain unchanged, that being no further business to come before the meeting a motion duly made, seconded and adopted the meeting adjourned." And that is signed by C. Sabbatino, Secretary.

The third page is entitled, "Minutes of a Special Meeting of the Board of Directors of Interborough News Company, held at 703 Main Street, Buffalo, New York on October 26, 1967 at 10:30 a.m. Present were Jack Zander, C. Sabbatino, Louis Z Almasi, and Howard Geckler. The president noted that the meeting was called for the purpose of electing new officers, upon motion duly made, seconded and carried, the following resolution was adopted, that Irving Goldman replaces George P. Booth, as Vice-president of this corporation, his term to be at the pleasure of the board of directors. There being no further business to come before the meeting a motion duly made, seconded and adopted, the meeting adjourned." And it is signed C. Sabbatino, Secretary.

(Continued on the next page.)

Q I want to come back, if I may, Mr. Zander, to the business of the Transit Authority and your request for rate relief or rental relief.

We left it, I think, that as of the end of 1968 notwithstanding the presence of Mr. Goldman with you in meetings with Transit Authority personnel you had not gotten the rate relief that you thought you were entitled to, is that right?

A That is correct.

Q And you had gotten the Transit Authority nevertheless to agree that if in the future after you had some anticipation or some experience with an impending labor union increased cost that you could come back and present your case again, right?

A Correct.

Q You then, in 1969, and perhaps early in 1970, began to give attention, did you not, to the business of having gone back to the Transit Authority to try to get what you thought you and your company were entitled to, is that true?

A Yes.

Q And in this respect you started to get some other people involved in the process, did you not?

A I don't understand.

Q If you were going to go back to the Transit Authority and ask for relief by way of reduced rental and if you were going to say the reason it was justified was because your operating history and your expectations were such that you were entitled to have a reduction in rent, you wanted some help, didn't you, from figures, from statements that would tend to support what you said, isn't that so?

A Those figures were at the recommendation of Mr. Wasserberger that I furnished them. He told me. In other words, I said I wanted relief. He said, well here is the procedure you are to follow if you want the right to get relief.

Q What procedure?

A He told me to get certified public financial statements, preferably from a well known organization such as Price Waterhouse or Peat Marwick Mitchell as the first step.

Q Then what did he say should be done or would happen?

A I proceeded to do that.

Q Let's just stop right there. He wanted you to submit financial statements with respect to Interborough's operations?

A Yes.

Q Did he tell you for what years or what period of time he wanted to see this financial information?

A I believe he did.

Q For a period of two years?

A Yes, I believe so.

Q 1968 and 1969, is that right?

A Yes.

Q You then had to decide whether you were going to get this outside accounting firm to assist you, is that right?

A Yes.

Q At the time that that suggestion was made to you by Wasserberger was Peat Marwick Mitchell Emprise's auditors?

A Yes.

Q So what you did instead of going to another outside auditor that had no relationship to you you went to your existing outside certified public accounting firm, is that right?

A I didn't do it directly. I don't deal directly with the Price Waterhouse or any other accounting firm. I did it through the people that make the direct contact.

Q Well, who in this case?

A I believe it was Mr. Lockwood, the controller.

Q Incidentally, Mr. Lockwood has a certain rise in the corporate ranks, didn't he, after he was controller he became vice-president, didn't he?

A He may have, I am not sure.

Q In any event, you asked Mr. Lockwood to assist you?

A There were two people that had direct communication with them, Mr. Sabbatino, who was general office manager, and Mr. Lockwood who was like controller. I am not sure which one of those I made the request of.

Q In any event, it was one or the other?

A Yes.

Q Tell me what you told him you wanted him to do to help you?

A I told them what I required, namely certified statements, financial statements of Interborough News for those two particular years.

Q Did you tell them what you wanted them for?

A Yes.

Q What did you tell them?

A I told them I wanted it so that I could prove hardship in an effort to get relief.

Q By that time, by the time you asked Mr. Sabbatino or Mr. Lockwood to help you get those had you already gotten financial statements that had been created inside the company showing the results of your operations for those two years?

A I had what I referred to earlier, statistical results.

Q And those statistical results for those two years were disappointing to you, were they not?

A Yes.

Q In one year did it show an actual loss?

A Yes.

Q And in another year, if not an actual loss, close to a loss?

A I believe it showed a loss both years, if I remember correctly.

Q Did you say anything to either Mr. Lockwood or Mr. Sabbatino about whether or not he should give to the outside auditors the statistical information which you had theretofore gotten showing the results of operations for those two years in the company?

A No. They worked from an entirely different scope of books than I get my information from. It is two different sources.

Q Are we clear that what you say was required, because you were going to follow Mr. Wasserberger's suggestion, was that there be what I might describe as an impeccable audit by someone of absolute integrity upon whom the Transit Authority could rely?

A Yes.

(Continued on the next page.)

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Q And this was going to be for a certain audit in accordance with certified public accounting standards of the books and records and accounts of Interborough for two full years, is that right?

A That is correct.

Q That is what you ordered and that is what you got?

A Yes.

Q Did that take a little bit of time to do?

A Yes.

Q It took months, didn't it?

A Yes.

Q Peat, Marwick, Mitchell had to send people, that is to say bookkeepers, auditors, people of that nature, into your Buffalo office to review materials, didn't they?

A I don't know if they sent them. It seemed to me they were there all the time.

Q In any event, that became one more of their assignments, right?

A Yes.

Q And finally there came a time then when this report or these reports were finished?

A Yes.

Q By the way, when you spoke to Mr. Sabbatino or you spoke to Mr. Lockwood about this did you say anything to him about the possibility that you might want Peat, Marwick, Mitchell representatives to accompany you to assist you either in explanation or answering questions about the audit when you went to see the Transit Authority?

A No.

Q When Mr. Wasserberger told you or suggested to you that you make this submission of certified public accounting statements did he say what the Transit Authority would then do with them once they had been received?

A Yes, he advised me that he would review them.

Q Who would review them?

A Specifically he mentioned Mr. Goldstein would review them.

Q Mr. Goldstein?

A Yes.

Q And who as far as you knew or had been told was Mr. Goldstein?

A The auditor for the Transit Authority.

Q The Transit Authority has a whole audit section, doesn't it, as far as you have been told?

A Yes.

Q Mr. Goldstein was simply the head of a fairly sizeable group of people who do auditing and bookkeeping and accounting and checking for the Transit Authority, is that right?

A I would say so.

Q And you had met Mr. Goldstein before, had you not?

A Yes.

Q And you knew precisely what his responsibilities were at the Transit Authority?

A Yes.

Q And this man, according to Wasserberger, was going to take whatever you submitted and subject it to a review, is that right?

A That is correct.

Q He was going to have his auditors check your auditors?

A He was going to have his auditors check the report made by our auditors, yes.

Q Isn't that what you were told was going to happen?

A Yes.

Q And were you not told that his auditors, Goldstein's auditors, the TA's auditors to the extent they thought it was necessary, would also want to have access to your books and records to verify materials that were in your auditor's statements?

A I don't recall that specifically. Are you referring to books and records in Buffalo or books and records in New York?

Q In New York and/or in Buffalo.

A I don't recall it specifically, no.

Q And then what you expected then was a response by the Transit Authority after they had done their appraisal or their review of your submission in which they told you what they thought?

A Yes.

Q And after you did that what was the next thing that was going to happen as you understood it?

A After they reviewed that I was then asked what type of relief I felt was justifiable.

Q And you were going to meet with the representatives of the Transit Authority and come to some conclusion, if you could, by negotiation or by discussion, of what seemed appropriate in light of the various audits, is that right?

A Yes.

MR. FRIEDMAN: Judge, I am going to deal

with a group of documents and it may be a convenient place to break.

THE COURT: All right, fine.

All right, ladies and gentlemen. It is time to go hime. Please don't talk about the case or read anything about it.

(Jury left the courtroom.)

THE COURT: How much longer do you expect to be with this witness, Mr. Friedman?

MR. FRIEDMAN: I think I will be finished with him tomorrow morning, Judge.

THE COURT: You want a ruling on that Emprise conviction and I indicated before that I didn't believe it should come in and I agree with my own initial reaction. I don't believe it should come in.

(Adjourned to Friday, September 2, 1977, at 10:00 a.m.)

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United States of America

vs 75 Cr. 337

Irving Goldman

New York, N.Y.
September 2, 1977 - 10:00 a.m.

(Trial resumed.)

(Robing room conference.)

MR. FRIEDMAN: I have several things to speak to your Honor with this morning. There was another disgorgement of 3500 material late yesterday from Ms. Strauss but let's put that aside for the moment.

If anything I tell your Honor is not exactly right I invite Mr. Wang to correct me because he in part had the original conversations upon the basis which I am speaking to your Honor now.

At an earlier stage we issued a subpoena duces tecum to the Transit Authority calling for production of documents at trial in connection with this case and we have been trying in the interval since the service of the subpoena to arrange for whatever documents they have to be looked at in advance so that we can define particularly what we want or what may be pertinent. Essentially, if I remember, I spoke to one of the representatives of the Transit Authority and he said, well all our papers in this matter are in the possession of the United States Attorney's Office and we really don't think we have any.

At any rate, this morning Mr. Wang spoke to Miss Cassidy, who is in the Transit Authority or on the Transit Authority's legal staff, as I understand, and Miss Cassidy apparently had been making efforts to follow in compliance with the command of the subpoena the location and production of documents. Apparently in that effort Miss Cassidy had talked to somebody at the United States Attorney's Office here and was told that there were some papers that would be within the ken of what Miss Cassidy was looking for which were over with the Special State Prosecutor,now Mr. Keenan, formerly Mr. Nadjari, and these are papers, as I understand it, which are supposed to be backup papers on Wasserberger's personnel file.

This is the first time that we find out what we are told, that there are papers that are sitting over with the State Prosecutor, papers of which the United States Attorney's Office has apparently had knowledge and have not alerted us to before in terms of making them available to us or getting them to be made available to us if this report is correct because what we know very clearly is that there has been from the beginning of any time that we can see in this case a complete exchange, a complete working together of the federal and state prosecutors in terms of the handling of the materials. This has impacted in a variety of ways.

Number one, we find out there are papers we haven't apparently seen that are sitting someplace else where obviously the federal government has had access to them before, if not had them before. I can't imagine with that kind of situation existing, unless somebody from the federal government went over to look at these papers, that anybody could conscientiously make any contention that they contain no Brady material.

I don't know that that is all the State Prosecutor has, this matter of backup papers on Wasserberger's personnel file or whether the State Prosecutor may have a mass of papers which one way or the other may have been here before the existence of which we don't know and the availability to us has not heretofore been made.

We have another situation here where there has been a defiance and an interference and obstruction with our ability to prepare for trial and it is all in defiance of what your Honor announced at the beginning of the case and that is disclosure.

We are lucky because we get a call from somebody who tells us something in the middle of trial. Which we would not have found out but for that piece of luck. There are papers that are papers pertinent to what we are talking about in another place but the federal government knew about them. I think again, Judge, that calls for some consequence.

I know I have not been able to persuade your Honor up to this point despite the massive history that we have here of what the government has done to give us relief but, your Honor, I can't be dismayed and can't be deterred from putting on this record and putting to your Honor as forcibly as I can the fact that this case cries out for relief.

There cannot be a double standard. There cannot be an inequality of the administration of justice on the one hand in favor of the government and on the other hand in favor of the defendant. So on that basis, if your Honor please, I move again that this case be dismissed.

If we now have to start pursuing what papers there are over there and incidently I am told by Mr. Wang

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that the person at Nadjari's or Keenan's office said if you want those papers or if you want other documents that have been marked as exhibits before the Nadjari grand jury or juries you will have to prepare an order and you will have to get some state court judge to get those released to you so you can see them or have them.

That is not our obligation and never was. It was the government's obligation to make fair discovery and to make sure with respect to representations they made to the Court that all things of which they knew had been looked at with certainty and I am of strong confidence here that that hasn't been done in respect of this. That is the first branch of my application to your Honor this morning.

THE COURT: Do you know anything about this?

MS. STRAUSS: One factual correction I would like to make is that the papers that I spoke to Miss Cassidy about is the backup papers or work papers for the Goldman report having nothing to do with the Wasserberger file. There has been some confusion of communication. I received a telephone call, I don't know the precise date, from someone in the Transit Authority. I spoke to Miss Cassidy and someone else. They told me they had been served with a trial subpoena duces tecum by the defendants and that it was a very, very broad subpoena and they were unable to determine what we had in our possession that was called for in that subpoena because they did not have a specific record. I then offered to make an inventory of what we had that was necessary and I think at that point I was told they did not want me to go to that trouble at that point in time because they thought they would get a more specific opinion from the defense and narrow it down and they would get back to me. I did not hear from them for a long time, probably a good two weeks and I got a call just the other day from Miss Cassidy and they said they have now specified what they want. They want the backup work papers for the Goldstein audit report, do you have that, and I checked with Agent Lippe who knows the files better than I do, and he said that no, we don't have that and we did not have that but he believed that that was in the hands of the Special Prosecutor.

At that point I told that to the people at the Transit Authority and they said that comported with their records because they had a receipt from the Special Prosecutor but their initial inquiries had been unsuccessful, at which point I gave her the name of someone who could be helpful to her and she said she would pursue it.

That is the last I heard. As far as I know we never had those backup papers in our possession at any time. They were apparently subpoenaed by Nadjari's office from the TA, the TA complied with that subpoena and we have not reviewed them. We never had occasion to go through them. We did not subpoena. We did not request them from the state. I think it is yet another exaggerated claim by the defense when they suggest not only are we supposed to go through whatever we have but we are supposed to review documents that other people may have subpoenaed or other people might have possession of.

I think the normal course of events is what is happening here. If they have an interest in certain documents that are Transit Authority documents, they could and should and in fact they did subpoena them and let them get them and take a look at them.

I don't think that has really anything to do with us. It is between them and the Transit Authority and apparently the State Prosecutor's office that they do in fact have possession of them as I presume they do.

MR. FRIEDMAN: I am going to say something slowly. I have not heard anything so singly outrageous

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in this case since it began as what Ms. Strauss has just said. Let me tell you now she said she knew of the existence of these papers. She says she knew so we are dealing now with what the government's obligations are with respect to papers that she admits she knew the existence of. Whether she had them in her possession physically or not, and she knew where they were. Your Honor, you remember that several points were belabored b Ms. Strauss for not telling the government what papers we intended to use as part of the defense's case and I said to your Honor and Ms. Strauss there is one piece of paper I am absolutely certain we are going to use and I am going to tell you what it is, it is the TA audit of the Interborough request for a rental adjustment. That is the so-called Goldstein audit.

That paper I said I was going to use and I am going to tell your Honor because your Honor will see it soon enough, I suppose. That paper, in reviewing the request which Zander has been talking about yesterday afternoon for an adjustment made certain comments on the submission that had been made by Interborough, one of which was clearly explicitly and in a way that nobody could mistake to say that one of the things involved in the application for adjustment was an excess merchandising cost which the TA auditors had reported and they said this is because Interborough buys from Jola and Jola is a company owned by Goldman who is an officer and director and even an owner of Interborough and therefore it is not a legitimate merchandising cost and therefore to the extent that the request for relief is premised upon what might have been a reduced merchandising cost the TA auditor said we ought not allow that as a ground for relief.

So here is the TA, an outside agency,and they know and they find out, no secret about it at all, that this relationship exists between Jola, Goldman and Interborough and that it results in an extra cost. That is the one piece of paper, Judge, that I said we were going to have in the defense of this case and now we are being told -- and that is exculpatory of the defendant by any standard because it shows, number one, there was knowledge to the world of the relationship and knowledge to the world of the fact allegedly that there was an extra cost in the purchase here. That report itself is clearly Brady material, clearly Brady material.

Now, what Ms. Strauss is saying to you is that she knew that the backup for that report, the things which would support and underlie that report, including that portion, are sitting over or have been sitting over in aother prosecutor's office, a prosecutor with which this prosecutor has worked hand and glove from the beginning. Supposedly exchanging under court orders copies of exhibits and exhibits,supposedly exchanging and exchanging in fact grand jury testimony, contact reports and goodness knows what else.

For the first time today in your Honor's chambers at approximately 10:15 a.m. I find out that what I would have loved to have had I can't tell you how long ago, because I was the one that found -- I was the one that found that TA audit when I came down to Mr. Schwartz' big room where they had all the papers and when I saw that audit I could not believe it. I personally could not believe they had a piece of paper like that sitting in their files and I seized it.

That was more than a year ago, I believe, Judge, more than a year ago. Now I am told for the first time that there is backup and for the first time I am supposed to go out now and try to find out and for the first time I am to see where it leads and do what it is about seeing who got the information, how he got the information, where it came from, et cetera.

Judge, whatever I say I find that I am topped

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not by my own imagination but by what Ms. Strauss has out to you. She tops me every time. She tops me by saying something that mandates, Judge, it is the strongest word I can use to you, mandates relief here. We are being whipsawed. We are being whipped and I am not complaining about this in terms of physical fatigue. I will take all the physical fatigue there is but I don't know why my client has to pay for the preparation of a case to be done in this way because of what this government in its zeal to put this man to a conviction has done or failed to do in defiance of every obligation which rests upon the litigant. It is unbelievable.

THE COURT: First things first. I gather Keenan will not give you these documents unless you get a court order?

MR. FRIEDMAN: I don't know. I just found out before I came here.

THE COURT: Is that true?

MR. WANG: That is what Miss Cassidy says was reported to her.

THE COURT: He has a court order now. Get them over.

MR. WANG: It was reported to me by Miss Cassidy and ordered by Mr. Velori, one of the assistants in

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the Special Prosecutor's office that has to be an order from Justice Sandler who has exclusive jurisdiction.

THE COURT: He has a court order right now.

MR. FRIEDMAN: What does it encompass?

THE COURT: Turn over all the backup material.

MR. FRIEDMAN: There may be much more stuff over there. I don't know what is there. The government knows what is there.

THE COURT: I don't know what is there,either.

MR. FRIEDMAN: If I had it on time, Judge, what I would have wanted from that source is the same thing I have apparently only partially had here which is the availability to me of all documents in the possession of the Special State Prosecutor that bear upon Goldman, Interborough, Jola, TA, Wasserberger, you name it, if you please. That is what I am entitled to have had a long time ago.

If your Honor is going to make an order simply to say you make an order with respect to one thing --

THE COURT: We take them one at a time.

MR. FRIEDMAN: How shall we find out whether there are more things?

THE COURT: We will find out.

MR. WANG: There was one more thing. Although

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Ms. Strauss says that the material at the State Prosecutor's office has to do with this backup to the Goldstein report Miss Cassidy was absolutely clear to me that it had to do with Wasserberger. She said that Mr. Velori told her there was a 3-inch stack of papers that Mr. Nadjari's office, Mr. Keenan's office still retained having to do with Wasserberger. That is what she said to me this morning.

MS. STRAUSS: I am not aware of that. You asked me this morning for the Wasserberger personnel file which was also under subpoena from the Transit Authority. They asked me do we have that and I said we did. And we do have it. I think there may be a cross up in communication which has confused the two, we had one and they had the other.

THE COURT: Mr. Keenan will give you the Wasserberger personnel file too.

What is the next part?

MR. FRIEDMAN: The next thing, Judge, has to do with this: The material that was given to us yesterday which I am going to get to in particular in a moment together with what is now being said as well again proves what we have heretofore asserted and that is to bring it up to more perhaps a modern vernacular, when the CIA

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wanted to eliminate somebody and they didn't want to do it themselves they went out and hired gangsters or they affiliated themselves with gangsters to do it and in this case what is now perfectly clear and has been clear to us at least heretofore, the federal prosecution had no difficulty whatever in deciding the State Prosecutor, who was a bandit, who was a bandit in terms of his complaince with law, Judge, was a perfectly good ally to have because he could go out and do all kinds of things and act in all kinds of ways beyond the law and when he got things that were useful he turned them over in exchange with the federal government and they would say, isn't that nice. We didn't soil our hands but we are going to get the benefit of whatever it is that came from Mr. Nadjari that was beneficial.

(Continued on the next page.)

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THE COURT: Tell me what it is.

MR. FRIEDMAN: I can tell you there has been a wholesale exchange, a wholesale exchange of grand jury testimony, of leads, of contact reports, of information, of exhibits, that exhibits subpoenaed to the federal prosecutor given to the state, materials that were subpoenaed or obtained by the state in violation of a variety of constitutional rights of the defendant given to the federal prosecutors.

I have asked your Honor heretofore to hold a hearing with respect to taint. I have asked your Honor to do that because there has to be information that will specifically show what it was that was done and by whom and with what knowledge.

If your Honor please, I renew that application now. For example, on the face of the 3500 material delivered to us late yesterday for the first time it appears that in the grand jury somebody is saying I show you such and such an exhibit, we don't have the original, it is a copy, the original is sitting over with the federal prosecutor. As I said there have been affidavits in this case heretofore which I think we brought to your attention in which it has been plainly confessed that there was a total exchange between the two prosecuting agencies. The significance of it is,as I said before,that what Nadjari did has been held by a variety of judges to be unlawful and there were a variety of actions that Nadjari took that were unlawful as far as this defendant was concerned. Even though Justice Murtagh didn't have to reach the unlawful points that we argue because of what he did to those indictments but those points live.

The fact that they were dismissed for whatever reasons they were dismissed don't destroy the points. If what the state did was to funnel into the federal prosecution for use of the federal prosecution material that was obtained in violation of the defendant's rights.

Your Honor said in one of your opinions which I am sure your Honor will remember that there was an order made allowing some kind of exchange and you said there had been disclosure of that order, literally there may have been disclosure to your Honor.

We have never seen any such order whether made by a state judge or a federal judge notwithstanding that Mr. Schwartz at one time said that he was going to show us the so-called 6-E orders. We have never seen one and I have never seen one from the state either that I can recall.

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So there is a question of timing of those, the dating of those and what they authorize.

THE COURT: Show it to them.

MS. STRAUSS: Very well, your Honor. I assume they were submitted at the time of the motions to your Honor for review.

MR. FRIEDMAN: Mr. Schwartz was at particular pains not to show them to us.

THE COURT: You are going to see them now.

What else?

MR. FRIEDMAN: This is what we got late yesterday at about 5:30. I assume that they will be marked for the court's reference as a court exhibit or something, some other way this group --

THE COURT: 3542 through --

MR. FRIEDMAN: 3546 I will say, Judge.

What this is, I have gone through it now for the first time and so have my associates and it contains a vast array of Brady material. Material which we are getting for the first time now notwithstanding your Honor's order that we get it immediately after June 27, '77.

I cannot imagine or understand how anybody in the history of this case even up until yesterday could not have said to themselves or would not have said this stuff has to be delivered, this stuff has to be delivered as Brady material. I will give you the examples that I find in this material which bear on Brady. This is Rosedale.

Rosedale apparently will be summoned as a witness to testify. Each one of these has a page reference but I shan't give you the page reference. Rosedale was an employee of Gothic. He did work for Jola as well. He was a so-called free-lance bookkeeper. He took care of typing invoices and keeping track of certain things. Rosedale said that he kept track of the photo machines and he kept track of the receipts and receipts in which Jola was entitled to share, clearly Brady material because the government has throughout contended that Jola did nothing here, Jola was a siphon and they are charging that all of Jola's income and all of Jola's profits are part of this alleged fraudulent scheme to divert from Interboro. In fact here Mr. Rosedale is testifying about activity of Jola which is productive of money and which is absolutely divorced and independent of that although Interborough shared in the proceeds of these photo machines. He counted the money. He sent reports to Buffalo with respect to receipts to show what the division would be among the interested parties.

With respect to candy, Rosedale testified that one of the services, and this is a word that even Mr. Schwartz used, he said this is a service that they rendered, that is to say Jola. One of the services they rendered was when they were short shipments of candies to Interboro and when he was advised of that he, Rosedale, Jola's representative, would then communicate with the candy company that was involved and the bookkeeping department of that company in order to get an adjustment and a correction made in the billings that had been sent for that.

There was another service that Jola performed that otherwise somebody else would have had to perform. He kept a record of the receipts from the photo machines as I have said. They testified about giving an advance, that Jola gave an advance to the people who actually were the operators of the photo machines and there is another piece of independent activity.

In other words, an advance against income that they would have been entitled to. He talked about the fact that Goldman had made contacts with Transit Authority representatives in order to try to strengthen or arrange for additional police protection for machines in the subway because of the continuing and increasing vandalism and rip-offs. To the extent this was something that Goldman did which benefitted Jola and photo identification but benefitted Jola it shows that Goldman and Jola were doing things of value. This man testified, Judge, that Max and Jerry Jacobs are friends of Irving Goldman from Sportservice. We were entitled to know that. That is certainly exculpatory here and Brady material here.

He says he knew this man knew that Jola earnings went to Zander's children. That is Brady material here because again it shows this thing was not covert, this thing was a matter that was known and made known to people.

He was asked several times by the prosecutors whether he knew of any crimes committed by Goldman with respect to extortion or payoffs or bribes and each time he was asked that question he answered that he did not. Very importantly in this case, Judge, he was asked about Christmas expenses, whether or not there were Christmas expenses distributed to employees or people by Jola and he said there were Christmas expenses distributed to such people and the people involved included employees of Interborough. That is to say that Jola gave Christmas gifts to employees of Interboro and your Honor will find from the government's case already in any event this 5,000 or $7500 check which was supposed to have been sent in December 1970 is followed by 2 Jola entries recording or reflecting moneys drawn for Christmas expenses and if you take $7500 and take off $2500 for the tax as Zander testified you have roughly $5000 there and the amount of those checks drawn happened to be just about $5000.

So here is a witness testifying to a use of proceeds identified in time and place with the $7500 minus the $2500 which is absolutely inconsistent with the government's theory and claim that this was money used to bribe Wasserberger. There is testimony from this man to the effect that there was a $7,000 check as well which went from Jola to Sportservice, went the other way, a $7000 check.

THE COURT: $7000 for what?

MR. FRIEDMAN: Marked for spoiled merchandise. In any event, whatever it was it was a check going in the other way in an amount of that kind.

THE COURT: You were talking about Christmas expenses and then I figured you would continue with that.

MR. FRIEDMAN: It is a different time and all

I am saying to you is that in terms of what is exculpatory or tends to be exculpatory of the defendant the use of such proceeds according to this man for Christmas gifts in cash to Interborough employees that is clearly of the most exculpatory kind there can be here in light of the charge made. As I said there was reflection in this transcript of the exchange of documents from the government. There is also missing from what was delivered to us copies of the exhibits referred to in the transcript. We don't have those delivered to us at all.

One more thing I will mention to your Honor and I will say this, there is a top sheet, one more sheet delivered to us yesterday which was a contact sheet for a memo by Mr. Schwartz, the former prosecutor in this case, and it has a significant entry in relation to what I just said to your Honor about the disbursement for Christmas expenses.

THE COURT: This is 3546.

MR. FRIEDMAN: Right, Judge, by Mr. Schwartz. "List of Interborough News employees, check Interborough employees re Christmas gifts." Here we have an acknowledgment and a realization in February 1975 that ties in with Rosedale's testimony before the grand jury. All of these things, Judge, are Brady materials.

You may say some are clearer than others, some may be perhaps arguable. I think what I have tried to do is select things that seem to me to be without question Brady material and we are getting them yesterday at 5:30 or a quarter of six on the eighth day of trial, two months, more than two months after your Honor made an order that they be turned over to us immediately and I say, Judge, there has to come a time when we get relief for this kind of conduct.

As many times as we have been before you even if you wanted to say there was going to be a locus poenitentiae, somebody would say maybe I better cough up all this stuff now because the Judge might get mad. There are no locus poenitentiae for these prosecutors, they don't care. They are going to hang onto this and hope that maybe it won't come out. To that extent they will be well served and the defense will be even more prejudiced than it is right now, Judge.

One last thing I will say and it is interesting, if you look at the Rosedale transcripts you remember Rosedale is this fellow with the record about which you had an application made by the government --

THE COURT: I didn't see it.

MR. FRIEDMAN: If you were to look at it your Honor will see Mr. Schwartz was flexing big muscles

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with this frightened, apparently frightened man who was before the grand jury. I want to add then one extra dimension to this withholding, this deliberate withholding of material. Mr. Schwartz said to Mr. Rosedale, and I want you to understand, said he, if anybody tries to talk to you about what you have said here before this grand jury I want you to come right back and tell us about it.

So Mr. Schwartz, except for his lawyer, so Mr. Schwartz was telling Rosedale you keep your mouth shut or you will be in serious trouble with this grand jury if you open your mouth about what you said here.

Mr. Schwartz had no right to try to put a ban or a gag upon a witness before the grand jury with respect to his own testimony. As I understand the law that witness has a right to go out onto the street as soon as he emerges and say what he said.

Now you add the two parts together, here is a man, Rosedale, who was an employee of Jola and Gothic at that time, an employee therefore of Goldman in that sense and he is being told you keep your mouth shut and they managed to do this very well. Not only is he given that kind of scare but now it is September 1st, 5:30 in the evening before I find out what there is and has been in their hands for over two years that is exculpatory.

THE COURT: Did you ever talk to him?

MR. FRIEDMAN: Not since the grand jury testimony. I think he wouldn't talk to us.

MR. UDELL: His lawyer, Mr. Wolf, said he wouldn't talk to us.

MR. FRIEDMAN: I will tell your Honor this, and this is my recollection, when I spoke to Mr. Wolf, I have talked to Mr. Wolf more than once but these conversations go back into this time frame about February 1, 1975, any conversations with Mr. Wolf were usually very acrimonious because he was insistent that I not talk to Rosedale, you are not going to talk to Rosedale, I said what do you mean, Rosedale is an employee of a client that I represent. Who is to tell me that I can't talk to Rosedale. He said I am telling you not to talk to Rosedale and when he went before the grand jury he also said he didn't want any representation or representative of the corporate employer to be there.

So what I am saying to you is Mr. Schwartz' muscle flexing had good effect, that man especially because of his record his mouth was sealed.

THE COURT: I heard you. Do you want to make any comment?

MS. STRAUSS: I think the recitation in and of itself shows the far-fetched ideas that Mr. Friedman has as to what constitutes Brady. I didn't take notes of the many things he went down the list, the top of the things were things like the fact that Jola was taking in photo commissions and this was perfectly legitimate.

The defense has known that all along. The defense has known that for two years. They have a variety of documents that more than reflect that. Mr. Friedman doesn't realize if he is already in possession of the information that a witness' further statement about the same subject matter to the extent that even if that were to be Brady and I am not even certain that that is because I don't think the claim here is that Jola never had any legitimate business, the claim is that the candy orders did not constitute legitimate business, these kinds of things simply don't constitute Brady. On this late matter of the muscle flexing by Mr. Schwartz, that Mr. Goldman asked Mr. Rosedale to report back to him on the grand jury testimony and I believe Mr. Goldman was also the individual who tried to put Mr. Rosedale together with the lawyer he ultimately obtained who I think has represented him on an individual basis apart from whatever prior contacts he had with Mr. Goldman and I think there was some concern here not unjustified perhaps it was going to be an attempt to obstruct this grand jury investigation.

Mr. Goldman had committed similar acts for which he was indicted over in the state and I don't think there was anything improper about that either. I don't think unless your Honor would like me to, if it is necessary, to take item by item each of these things. Mr. Friedman's concept that whatever he can imagine to be used on cross examination constitutes Brady is simply unsupported by law.

One other thing I want to say about the whole thing this morning is that it's taken an awful long time. I wonder if there isn't any deliberate defense strategy to slow this trial to a halt to a point where it becomes intolerable for the jury and for everyone involved. These kinds of conferences with these very long diatribes have managed to slow this trial down quite a bit. I am wondering whether these things can't or shouldn't be taken on paper so we can avoid devoting 45 minutes a day on these conferences.

MR. FRIEDMAN: Objection to that last. I say res ipsa loquitur. That is courage but I have to respond to something else if you will allow me to. Miss Strauss is vamping now. She wants you to understand that Mr. Schwartz was acting under a great apprehension of somebody within the field of Mr. Rosedale and she refers to a state indictment. If she did her homework she would know the state indictment came along in October '75 and charged acts that didn't begin until April '75 even if that were true and that indictment is gone. No. 1, there was nothing before Mr. Schwartz when in February '75 he was trying to terrify a witness. No. 2, that very same witness, Mr. Rosedale according to the material we got last night when asked by Mr. Schwartz did Mr. Goldman come to see you, he said yes he came because he knew I was upset about the subpoena, did he tell you anything, yes. What did he tell you? He said he told me to tell the truth.

The next thing I want to say, Judge, is this, apparently it's Miss Strauss' concept and if she is right God save us all but it's her concept if I know what the core of my defense is that exonerates her obligation to produce Brady. If my defense is going to be that he didn't do something or he was someplace else if she has pieces of paper that substantiate or corroborate that defense she doesn't have to give them to me because they won't tell me a new defense,they will simply further support for a defense I know.

If that is the law that is new law to me. It isn't the law and it's not an excuse for what she has done here.

THE COURT: All right.

Decision reserved.

(In open court.)

(Continued on next page.)

(Jury present.)

JACK ZANDER, resumed.

CROSS EXAMINATION (Continued)

BY MR. FRIEDMAN:

THE COURT: Ladies and gentlemen, first of all let me apologize. I had what I thought was a simple calendar starting at 9:30 this morning and I thought I would get off before 10 o'clock. It turned out to be anything but a simple calendar. That's the reason for the delay.

Q Mr. Zander, I show you a group of papers which have been marked Exhibit AA for identification and I ask you whether you can identify them for me.

(Pause.)

A Yes.

Q What are they, Mr. Zander?

A They are various annual minutes of various board of directors meetings.

Q Of what company?

A Of Interborough News Company.

Q All right.

MR. FRIEDMAN: I offer them, your Honor.

THE COURT: Is there any objection?

MS. STRAUSS: I would like to see them first, your Honor.

THE COURT: Sure.

MS. STRAUSS: No objection, your Honor.

THE COURT: All right. Mark them in evidence.

xx (Defendant's Exhibit AA received in evidence.)

Q Mr. Zander, the fact of the matter is that as early as April 8th, 1969 Jeremy Jacobs, the president of Sportservice Corporation knew that Mr. Goldman was a director of Interborough, isn't that so?

A Yes.

Q Didn't you remember that yesterday?

A I didn't remember advising him or telling him that he was made a director.

Q Now that you see these papers which are in Exhibit AA you know that to be the fact, isn't that so?

A Yes.

Q Now that you look at the papers which comprise Exhibit AA, you also see that the same Jeremy Jacobs, president of Sportservice Corporation knew that Mr. Goldman was going to be a director and was a director in succeeding years, isn't that right?

A Yes.

Q At the time that let's say April 1969 did Mr. Jacobs know that Goldman had an interest in Jola?

A You are referring to Jerry Jacobs, yes.

Q I assume Louis Jacobs died in 1968?

A Yes.

THE COURT: Was yes the answer to the question that they knew?

THE WITNESS: No. I am not certain.

Q I show you what has been marked Exhibit BB for identification and ask you whether you can tell me what that is?

(Pause.)

A Yes. I can identify Exhibit BB.

Q What is the exhibit?

A It is a letter from myself on Interborough News stationery to Mr. Wasserberger wherein I enclose certified profit and loss statements of Peat, Marwick & Mitchell & Company.

MR. FRIEDMAN: I offer the exhibit into evidence, your Honor.

MS. STRAUSS: No objection, your Honor.

THE COURT: All right.

(Defendant's Exhibit BB was received in evidence.) xx

THE COURT: Let me see it.

This letter encloses a certified financial statement of Interborough News Company, is that correct?

THE WITNESS: Yes.

THE COURT: All right.

MR. FRIEDMAN: May I read the letter, Judge?

THE COURT: Yes.

MR. FRIEDMAN: This letter is dated March 26, '70. It is addressed on the letterhead of Interborough News, addressed to Mr. S.R. Wasserberger, New York City Transit Aughority, 370 Jay Street, Brooklyn, New York, 11201.

"We are enclosing herewith copy of the Interborough News Company audited report for the contract V-3-A prepared by our Certified Public Accounting firm of Peat, Marwick, Mitchell & Company.

"We are further enclosing a letter from Peat, Marwick, Mitchell & Company covering this audit relating to the depreciation schedule and rates.

"The purpose of directing this statement to you at this time is in order to allow your accountant department, special audit section, to review and study this in advance of our setting up an appointment to discuss this matter with you.

"It is of course, our desire as being necessitated by these results, to ask you consideration for rental relief.

"We are at the present time negotiating with our local union as it pertains to new rates whiich would be effective as of April 1, 1970. As soon as this is completed and agreed upon, we will then make analysis of such rates in order to determine what those increases would reflect for the next three-year period, which is generally the term of our labor agreements.

"I will be directing this additional data to you as indicated when it is finalized and we will then be requesting the terms of our contract be reviewed in accordance with our letter of such request dated September 23, 1968 and acknowledged by you on September 27, 1968.

" The reasons for the substantial loss which we had for the last operating year ending December 31, 1969 can of course be fully reviewed and discussed with you as to its major causes primarily due to circumstances beyond our control.

" In the meantime, should your auditing department have any specific questions, as it pertains to the enclosed statement, please do not hesitate to so advise so that we can fully explain and substantiate any information supplied.

"Thank you.

"Very truly yours,

"Interborough News Company,

"By: J. Zander" and signed J. Zander.

There are appended to it copies of exhibits which I have referred to in the letter.

Q I want to show you Exhibits CC and DD for identification, Mr. Zander. I ask you whether you can identify those.

(Pause.)

A Yes, I can.

Q What are they, Mr. Zander?

A Exhibit CC is my letter on Interborough News stationery to Mr. Wasserberger where I outlined the detail of the increased costs as the result of union agreements in effect and anticipated.

Q What is Exhibit DD?

A Exhibit DD is my letter to Mr. Wasserberger on Interborough News stationery where I outline my request for rental relief.

MR. FRIEDMAN: I offer those two documents into evidence, your Honor.

MS. STRAUSS: No objection.

THE COURT: Mark them in evidence.

, xxx (Defendant's Exhibits CC and DD were received into evidence.)

MR. FRIEDMAN: May I read the two exhibits, Judge?

THE COURT: Yes.

MR. FRIEDMAN: Exhibit CC. It is Interborough News letterhead, dated April 9, 1970, to Mr. S.R. Wasserberger, New York City Transit Authority, 370 Jay Street, Brooklyn, New York 11201.

"Dear Mr. Wasserberger:

"This is to amplify further on my letter to you of March 26th, at which time I enclosed a certified profit and loss statement of Interborough News Company contrat V-3-A.

"At that time I indicated that we were currently negotiating with the union for a new 3-year contract effective as of April 1, 1970 and this has now been completed. We have consummated an arrangement that has been agreed upon and ratified by the union calling for an overall across-the-board increase for all union employees of $12 for the first 18 months and then an additional $8 for the remaining 18 months of the

3-year agreement.

"This involves a total of 70 employees broken down as follows: 37 routeman, 21 mechanics, 8 porters, 2 cashiers and 2 truck drivers. Incidentally, the 2 truckdriver agreements is a separate one and actually does not fall due until next year and it is presumed that such agreement will be basically similar to that that was consummated for the bulk of the employees.

"In addition to the above there are 6 non-union employees for whom we give increased consideration each year and it would average out to similar increases over the 3-year period possibly a little more.

"However, for simplification, we have therefore considered an overall 76 employees at this basic increased rate.

"By such calculation, the cost for the first 18-month period would be $72,136. The additional cost for the second 18-month period the cost would be $119,560. In each case, the additional cost mentioned is of course over and above the cost of our current agreement which expired as of March 31, 1970.

"This brings the total cost for both of the 18-month periods to $191,696.00. In averaging this cost out on a per year basis, the additional cost would be

$63,898.00.

"In addition to the above, there has been an increase in union dues for each employee of $8 per month representing Health & Welfare of $4 and Pension Plan of $4 per month.

"This of course, means that there is an additional $96.00 per employee of Welfare and Pension Plan insurance spread over 70 employees, which will cost an additional $6720.00 per year.

"This would therefore bring our overall cost for labor based upon the new contract amplified above, to $70,618 per year over and above our cost during the 1969 operating season.

"This labor increase, together with the loss as shown in our financial statements in the amount of $160,925, would project that our loss average for the next three years would be $231,543 per year based upon operations as reflected in 1969.

"I am sure you can well recognize the seriousness of the situation and our grave concern in this matter and our absolute necessity for acquiring rental relief, so that we may be able to operate on a sound financial basis.

"Along that direction, I therefore respectfully request a meeting to be arranged in orer to review all that has been indicated above as soon as possible.

"We will of course, greatly appreciate your expediting this matter and therefore arranging for such meeting at the very earliest possible time.

"Thank you.

"Very truly yours,

"Interborough News Company.

"By. J. Zander" and signed J. Zander.

Q Did you have a meeting, Mr. Zander or any meetings with representatives of the Transit Authority after you sent first the financial statements by Peat, Marwick & Mitchell and this second letter which amplified upon the results of your union negotiations?

A I had one time, I believe I met --

THE COURT: Speak into the microphone.

THE WITNESS: I am sorry.

A I believe I met with a Mr. Pink.

Q Who was Mr. Pink?

A I don't know his exact position. But, understood him to be someone over and above Mr. Wasserberger.

Q If I suggest to you, Mr. Zander, that Mr. Pink held the title of executive officer of the Transit Authority, will that refresh your recollection as to Mr. Pink's title at that time?

A I don't recall his ever mentioning his title to me, nor do I ever recall asking him. But, he could very well be. I just don't remember it specifically.

Q In any event, one thing is clear to you though, he was of a higher order of officer than Wasserberger?

A Yes.

Q From whom did you learn that?

A I believe I learned that from Mr. Wasserberger by his advising me that this would have to go through certain higher channels, and Mr. Pink was mentioned as one of them.

Q You mean at some point in time you had a meeting or conversation with Wasserberger where he said that your application for rent reduction was going to have to be considered by the Transit Authority at various levels on up before it became approved?

A Yes.

Q What levels did he give, for example, once you got beyond the people like Goldstein who was the head of audit and Wasserberger, the director of concessions, and Pink, who else beside those people.

A I believe he had mentioned the final approval had to come from the Commissioner.

Q Who was the Commissioner?

A Mr. Ronan.

Q Did he say anything about whether or not there would have to be a review of the proposal by the Legal Department of the Transit Authority?

A Yes. He was one --

Q What was that?

A He was one of the people who would have to review it.

Q All right.

MR. FRIEDMAN: If your Honor please, may I read from Exhibit DD?

THE COURT: Yes.

MR. FRIEDMAN: This is dated April 15, 1970, Interborough News letterhead, addressed to Mr. S.R. Wasserberger, New York City Transit Authority, 370 Jay Street, Brooklyn, New York 11201.

"Dear Mr. Wasserberger:

"May I at this time respectfully make recommendations as to that which would be considered as equitable relief for the distress situation of our operations as amplified to you in our letter of April 9th as it pertains to increased labor costs as a result of recent union negotiations.

"It would be our recommendation that we adjust our rental arrangements to pay an overall 10 percent on all sales. This would of course, reflect a savings in rental to us of $190,000.00 because the present rental arrangements are such that we are paying 20% rental on the first $1,900,000.00. In addition, we would be agreeable to giving you 50 percent of our profits in excess of 4 percent so that in the vent that the situation changes and we are able to enjoy a good rate of profit we would be agreeable to having you participate on a 50-50 basis on all profits in excess of 4 percent, based upon the same accounting principles as reflected and shown in the audited statement of 1969.

"A further alternate plan is one whereby we would be agreeable to a complete profit participation basis, where we would remit in the place of rental to you, 80 percent of the profits with our retaining 20 percent of such profits as may be enjoyed in each year.

"A still further arrangement to which we would be entirely agreeable would be where we operate on a fee arrangement with our being agreeable that such fee be 4 percent of gross sales and then of course remitting all profits to the Transit Authority.

"In each of these instances, we would of course have only the actual charges as reflected by actual costs of the operation with depreciation schedule being similar to that which it has been in the past, and also the administrative cost being that which it has been in the past.

"It is believed that if you will reflect on the various recommended proposals as listed, that each of them is fair and equitable to both parties.

"The latter two proposals, that is the profit participation proposal and the fee arrangement proposal of course guarantees us a profit, whereas the first proposal where we reduce the rent to 10 percent on an overall basis would not guarantee us a profit because the actual loss that prevailed in 1969 together with the projected increased labor costs due to union negotiation completions would show that we could still have some loss, but it is hoped that through renewed analysis of operations we can improve the situation to some point where we can again reflect a profit.

"I wish to again urge you most respectfully to give this your immediate attention because we are sustaining losses under the present arrangements.

"Thank you.

"Very truly yours,

"Interborough News Company," indicated signature by Jack Zander.

(Continued on next page.)

Q Mr. Zander, the three letters that I have read to you, the one that transmitted the financial statements, the one of April 9, which is Exhibit CC and the one that I have just read to the jury, Exhibit DD, did you write those?

A Yes.

Q Was everything in them true?

A To the best of my knowledge, yes.

Q Were the financial statements showing those substantial losses for the operating year, '69 true and accurate to the best of your knowledge?

A Yes.

Q In the proposals that you advanced to the Transit Authority were they in your opinion at the time fair and equitable?

A Yes.

Q Did you meet Mr. Pink?

A What was that?

Q Did you meet Mr. Pink?

A Yes.

Q Was he with other people?

A I don't recall. At one point he was introduced to me. But I don't recall if -- I had a meeting with Mr. Pink, but I don't recall who was present at the meeting.

Q Did you have a series of meetings over perhaps several months with various representatives of the Transit Authority in connection with this application for reduction of rental?

A Yes.

Q Tell me how many meetings you think you had, approximately?

A Maybe a half a dozen, possibly a little more.

Q Who attended those meetings or any of them on your behalf and when I say on your behalf I mean on behalf of Interborough and Sportservice.

A Mr. Goldman.

Q He went with you to all of them?

A If not all of them, most of them.

Q All right. Did anybody else accompany you on behalf of your company?

A No. Not that I recall.

Q Was anybody there from Peat Marwick & Mitchell at any of these meetings?

A No.

Q Tell me the names of every one you can recall that you met with at the Transit Authority in conjunction with these meetings, you have named Wasserberger, you have named Pink, now tell me who else?

A Mr. Goldstein.

Q Yes?

A Mr. Ronan. And I believe a Mr. Rourke, somewhere, I don't know if I had a meeting with him or if I just met him. But I seem to remember the name Rourke. I don't know if I ever met the attorney. I may very well have met the attorney.

THE COURT: Whose attorney?

THE WITNESS: The attorney for the Transit Authority. I am not sure at this moment.

Q Did these meetings take place at the Transit Authority?

A Yes.

Q Nobody made an attempt to hide a fact that you were meeting with Transit representatives, did they?

A No.

Q These were held during normal business hours?

A Yes.

Q Was Mr. Wasserberger in attendance at some or all of these meetings?

A No.

Q Were these people that you named Ronan, Rourke, and the unnamed attorney, all people who you understood were of a higher authority than Wasserberger?

A No.

Q Which of them was not?

A I didn't believe Mr. Goldstein of a higher authority.

Q I didn't name Mr. Goldstein just then.

A Would you repeat it?

Q Ronan, Rourke and the unnamed attorney?

A I know Rourke and Ronan. I am not certain of the classification of the unnamed attorney, as to whether he was higher than Mr. Wasserberger.

Q Do you remember whether the man who was the attorney was introduced to you or described, as the head of the legal staff of the TA?

A Yes.

Q Was his name Katz?

A I don't remember the name. That doesn't ring a bell.

Q At any of these meetings that you had, the half dozen meetings, was there any discussion about the financial results or the statements which you had submitted on behalf of your company to the Transit Authority in support of your showing of a need for relief?

A Your discussions?

Q Yes.

A Yes.

Q Didn't there come a point in time,Mr. Zander, that when in the course of these discussions they gave you comments or views that they had either upon what you had submitted by way of financial material, or by way of what their audit had showed?

A Yes.

Q And they said to you, didn't they, look there are certain areas which you have presented which we believe we have to take into account in figuring out what if any indictment you have to relieve, isn't that so?

MS. STRAUSS: Your Honor, I object to the continued effort to insert hearsay by way of counsel's questions.

THE COURT: I will permit it. Go ahead.

A I am sorry, I am not sure I understand the question.

Q You had submitted the financial statements prepared by Peat Marwick?

A Yes.

Q These were certified statements, right?

A Yes.

Q They showed a very substantial loss for the year, 1969, right?

A Yes.

Q A loss?

MR. FRIEDMAN: May I approach the witness, Judge?

THE COURT: Yes.

Q According to your accountants it was in the order of $160,925, is that right?

A That is correct.

Q That was before any provision for income or franchise taxes?

A That is correct.

Q Those same financial statements which you had gotten these independent certified public accountants to prepare and to be submitted on your behalf showed that for the previous year, '68, that you had a loss of $36,234, is that correct?

A That is correct.

Q As you have testified before,the TA said that it wanted to have its auditors under Mr. Goldstein's direction review your financial statements, is that right?

A Yes.

Q There came a time, didn't there, when they said we have done that now, we looked at your financial statements and we want to discuss some of our opinions or views about what you have in your financial statements, didn't that happen?

A Yes.

Q Then you sat in a meeting at the Transit Authority in broad daylight and you spoke to these people about that, didn't you?

A Yes.

Q Do you remember some of the points of difference that the Transit Authority people had with you about your presentation?

A No.

Q None?

A I only remember after they analyzed from their type of audit they agreed that basically the figures that we had sent were correct.

Q Basically what you had submitted was correct, right?

A Yes.

Q Therefore, to the extent that the audited statements of operations formed a basis for relief, that you were entitled to relief, right?

A Yes.

Q There was some things on which they thought there should be an adjustment made, weren't there?

A I don't recall anything specifically.

Q Let me see if I can suggest one to you. Did they make some comment about the fact that you had submitted financial statements for the years '68 and '69 which showed as an element of expense the cost of goods sold and part of the cost of the goods sold represented purchases that you had made from Jola Candy Company, a company owned by Irving Goldman, a company owned by Irving Goldman, the same Irving Goldman who was an officer, a director and they even thought according to them, an owner of Interborough, do you remember that they said that to you,in substance?

MS. STRAUSS: Objection, your Honor. I don't see how the witness could possibly answer the question.

THE COURT: See if they said it.

A The Transit Authority --

THE COURT: Excuse me.

A The Transit Authority representatives didn't say it to me.

Q He said it to somebody.

A It would be hearsay. In other words, if I may --

THE COURT: Don't worry about it being hearsay. Did he say it to somebody?

THE WITNESS: Mr. Goldman advised me in a, I don't know if it was in person or a telephone conversation, he advised me that Mr. Goldstein had mentioned to him that, you know, Interborough News could have made more money if they didn't have Jola,from his analysis, the profits of Interborough could have been increased.

And I said, well, what did you tell Mr. Goldstein.

Mr. Goldman's comment to me was, I just told him not to worry about it.

That is my recollection.

Q Did you say that Goldman at that point--wait a minute, how did this fellow Goldstein find out about Jola?

MS. STRAUSS: Objection, your Honor. It is simply an argumentative question. The witness said what the conversation was.

THE COURT: No. He didn't say anything like that.

A No. I didn't ask him in detail. It was a very brief discussion that I recall.

Q I didn't ask you about details. I asked you did you say to Goldman, look, Irving or Mr. Goldman or whoever, how in the world did the TA auditors find out about Jola?

A I didn't ask him that specifically that I recall.

Q Do you remember whether you were told by Goldman as you say it that in calculating any rate of reduction to which your company Interborough was entitled that they felt, they being the Transit Authority, felt that they should not include any profit which you people had lost, Interborough had lost, because you did business with Jola, since Jola was owned or there was an interest in Jola by Goldman who was also an officer and director and possibly an owner of Interborough, that Goldman --

MS. STRAUSS: Objection to the questions, your Honor, that are so long and have some elements that any answer will be inaccurate. There are five questions there.

THE COURT: He can take it apart as well as he can.

A I do have a recollection --

THE COURT: Tell us what your recollection is.

A Mr. Goldman, Mr. Goldstein, made the comment.

Q Goldstein?

A Goldstein made the comment.

Q Yes.

A And I believe it goes to Mr. Goldman who then passed it on to me.

Q Yes.

A That even with the Jola differential where the Interborough News profits would have increased without Jola, that the request was an order because he indicated that if all of my requests were granted, I am referring to the first request, the 10 percent, he still didn't see how Interborough News could make money.

I do remember a discussion of that nature.

Q Did you say to Goldman at that point, apart from that, how in the world are we going to be able to live with the fact that somebody on the outside the Transit Authority of the City of New York knows the very thing and has learned the very thing that I regarded as such a terrible hazard, did you say that to Goldman?

MS. STRAUSS: Objection, your Honor. It is argumentative. I will let it go anyway.

A No. I didn't.

Q Did you make any effort after Goldman gave you this report about what the TA had found out about how he sat on both sides of the deal so to speak, how the TA auditors or Goldstein had learned about that?

A I believe they had learned about it because one of Mr. Goldstein's assistants had worked with the office manager of Interborough News, a Miss Bayer, for about a week. It is just a presumption that they went through, whatever I tell you would be presuming. I don't know.

Q There was a man then from the TA audit staff that came down to the company's office in New York, worked with Miss Baer?

A Yes.

Q She was the bookkeeper?

A Yes.

Q She knew all about this?

A Yes.

Q She knew that Goldman had an interest in Jola?

A Yes.

Q She knew it all the time?

A Yes.

Q Did you tell her, by the way, at any time, look Miss Baer, whatever you do, do not open your mouth to anybody to tell about Goldman's interest in Jola?

A No.

Q By the way, after you found out that the TA knew all about this, did you then go speak to Mr. Jacobs, either Jeremy or Max, and say, Mr. Jacobs, I have a confession to make and I am frightened?

A No.

Q Did you consider doing that?

A No.

Q You didn't even think about it?

A No.

Q Despite the fact that all these people at the Transit Authority knew the very thing that you say you were so concerned about being detected about, you didn't even think about going to see your employer?

MS. STRAUSS: Objection. It is argumentative.

THE COURT: Yes, it is.

MR. FRIEDMAN: Would you mark this.

Q Do you recognize a name Walter L. Schlager?

A No.

Q Mr. Zander, I am going to show you certain pieces of this paper which has now been marked as Exhibit HHH for identification, I don't want you to say what it is or anything like that. I want to ask you, and I am now turning to the page which is No. 8, to a section which is entitled "No. 5," and I would like you to read that section which runs over on to the next page and I want you to read it to yourself, please.

A All right.

(Witness complies.)

Q My question to you is, without telling me anything about what is in it, is it of the substance that was reported to you by Mr. Goldman with respect to his conversation as you have described it with Mr. Goldstein?

A Yes.

MR. FRIEDMAN: May I read that portion to the jury, Judge?

THE COURT: It is not in evidence, yet.

MR. FRIEDMAN: I just want to read the portion which the witness says corresponds in substance with what was told him by Mr. Goldman. I am not offering the document as such.

MS. STRAUSS: Objection. I don't think it is proper.

THE COURT: Let me see it.

All right, folks, it is time for you to go to lunch.

(Jury leaves courtroom.)

THE COURT: You may leave the courtroom, Mr. Zander.

(The witness leaves the courtroom.)

THE COURT: Why do you object?

MS. STRAUSS: I object, your Honor, because this witness can't possibly identify and authenticate the document. The substance of the conversation is such an abbreviated version what counsel would like to try to get into evidence without putting into evidence just can't be put in through this witness in this way.

If they want to call someone from the Transit Authority and authenticate this and have the whole matter properly put in, that is one thing.

To try to put this in through this witness is simply improper.

MR. FRIEDMAN: If a witness says he adopts as --

THE COURT: He didn't quite say that.

MR. FRIEDMAN: I am reaching for the substance. He says what he sees there, what I asked him to read, was the substance of what he was told by Goldman and agrees that that is the substance. I think that he adopts it therefore as a statement of substance.

I think I am entitled to read that, your Honor.

THE COURT: Is this matter referred to in the Peat Marwick & Mitchell report?

MR. FRIEDMAN: The existence of Jola or the ownership of Jola.

THE COURT: The existence and all --

MR. FRIEDMAN: Excuse me. I think that -- let me check, Judge, so that I can be certain.

May I hand it to the Court, because your Honor will be able to see yourself. I believe that there is no reference to Jola in those financial statements.

(Pause.)

THE COURT: If I am right, some auditor of the City of New York in writing up an audit report found something which is not mentioned by Peat, Marwick & Mitchell nor by the apparently, by the accounting department of Sportservice. Basically it says, "By the end of '69 Interborough was purchasing over 30 percent of its merchandise from Jola, the first four months of 1970, almost 33 percent of the products sold were purchased from that company. The Jola Candy Company is owned by Irving Goldman, vice-president and co-owner with Sportservice Corporation of the Interborough News Company. In '68 and '69, merchandise purchased from Jola as compared with the total merchandise purchased by the contractor, compiled from records of invoices available at the New York office of the contractor," that I assume to be Interborough, were as follows, and it breaks it down by dollars and by percentage.

And the audit continues, "It is estimated that there is at least a 10 percent spread between what Interborough would have paid if it had purchased this merchandise directly from the manufacturers ..." it refers to the fact that it used to do that, "and what it is paying for those products to the Jola Candy Company.

"This excess cost is in the nature of a payment to the owner of the business, and not a valid merchandise cost." Do you know if Mr. Zander ever got a copy?

MS. STRAUSS: I don't think he did. I think he just saw it a few weeks ago when I first showed it to him.

THE COURT: I will think about it over lunch.

(Recess.)

Luncheon recess.)

rsbr 630

AFTERNOON SESSION

2:15 p.m.

(In the robing room.)

THE COURT: All right.

MR. FRIEDMAN: Judge, I am reading to you now from a brief that was filed by the government in this case entitled "Memorandum of Law in Opposition to Motion to Dismiss for or Stay, the Indemtnet for Additional Discovery and Bill of Particulars." It is a document that was signed or authored by Mr. Schwartz.

Page 29, "During the course of the federal investigation the government was advised that all state grand jury information was transmitted to the federal government in accordance with state law." At that time a copy of the state order was requested by the government and furnished by the state authorities. As a result of our discussion before your Honor this morning and for the first time I learned that the government had known of the existence of work papers underlying the document which your Honor looked at just before lunch, we put a call into Ms. Cassidy I guess it was, no, I am wrong, Mr. Valauri, at Mr. Keenan's office.

Your Honor's direction was communicated to

rsbr 631

Mr. Valauri and as the result we were able to send somebody over there this morning to pick up these work papers, that is this folder which sits in front of you now, Judge. It bears on its first page on the inside GJ Exhibit which I take it to mean Grand Jury Exhibit 49, and I don't know whether that says evidence or what, or indication, 3/6/75.

THE COURT: It should have initials after it.

MR. FRIEDMAN: It does have initials of some kind, Judge.

THE COURT: What are they?

MR. FRIEDMAN: Perhaps you can make these out.

THE COURT: They are initials but I can't make them out.

MR. FRIEDMAN: It appears from this that the Grand Jury exhibit in the state, from the content of Mr. Schwartz' assertion to the Court in the brief, I would assume that this was something that was in fact made available to the federal government at an early stage.

Now, in this material there is included -- I have had to read this during lunch, try to read it because as your Honor can see it is a couple of inches thick any way. It is the kind of material that your Honor very much is accustomed to seeing in terms of accountant's work

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papers, notes, copies of pieces of papers on which accountants rely in preparing reports. It includes matters and pieces of paper apparently submitted to the TA which we have not seen before, in further support of the rent reduction, which among other things, first of all it tells us the name of a man Philip Brown who was an auditor for the TA and who did at least some of this work, some of the report work. It also tells us that he had various questions which he put to various people including Lynch, who have testified here already, including I believe Goldman, and that he also obtained statements and responses to questions from other employees of Interborough and/or Sportservice.

If I may take it a step at a time.

MS. STRAUSS: Excuse me. I would like to object to his taking more time when the jury is waiting, for this type of argument. Perhaps we could take it at the end of the court day. The jury has already waited in the course of this day at least an hour, perhaps an hour and a half.

I would suggest that we finish up the court day and take it afterwards.

THE COURT: I don't know yet. Go ahead.

MR. FRIEDMAN: If your Honor please, this contains material which is 3500 material with respect to Lynch. It contains statements by Lynch with respect to the events which are involved in this case. If I had been given this material before Lynch testified I would have been able to ask him questions with respect to what he said to TA auditors who came around to see him in connection with this audit.

As it is now, I suppose the most I could do is ask your Honor to have Lynch recalled for examination based upon what is shown here which I learned of for the first time; as a consequence of which the jury may say that fellow is one of the great all-time dummies of the world, he can't get his cross examination done at one time and they have to bring witnesses back more than once. This is material the government had and should have turned over. Beyond that, Judge, it is material which is Brady material, it is material which is exculpatory of the defendant, clearly. And I have a number of pieces of paper here where the content of the notes by the TA auditor, Mr. Brown, would make that clear.

So we have it on two scores.

I will add one more thing, Judge: As soon as we saw the name Brown, Mr. Wang made a call over to the TA to find out about Mr. Brown, where he may be.

rsbr 634

Now the government said Mr. Brown is no longer with the TA. When we will find him and where and when, I don't know. I was not obliged to do this by your Honor's order, I am not obliged to do by any test, in the middle of a trial when I am trying to cross examine a witness.

I think it is a great tack that Miss Strauss has of trying to accuse me of keeping the jury waiting. I don't want to keep the jury waiting one minute longer because it is not in the defendant's interest to do so. I think it is outrageous and that is an assertion of bad faith. I don't take kindly to that.

In the light of this record for such a version to be made it is a double outrage.

THE COURT: All right. I want to see all those papers after Court, today.

MS. STRAUSS: I would like to make it clear on the record that to my knowledge that document that Mr. Friedman has been referring to has never been in the possession of the federal government. The only thing I said this morning is that Mr. Lippi knew that the state had it. It was not in our possession, so it could not possibly be 3500 material.

THE COURT: Find out. I will tell you what, I will find out right now. Give me the document.

rsbr 635

I will see you back here in five minutes.

(Pause.)

THE COURT: As far as I can find out up to date the initials on this document are not initials from the federal grand jury.

MR. FRIEDMAN: I wasn't suggesting that. I was saying this was marked as a grand jury exhibit before the state grand jury.

THE COURT: I know. I wanted to find out if it was also an exhibit.

MR. FRIEDMAN: I made no such suggestion. I didn't want you to think that I said that.

THE COURT: I went upstairsto ask the grand jury reporters whose initials those were.

MR. FRIEDMAN: I would like your Honor to ask Mr. Lippe whether he has seen this before, wherever and had access to this. That's the question as I understand the way Ms. Strauss learned about this.

I think she said earlier today, through Mr. Lippe.

THE COURT: All right.

Get the jurors to come back, we will do it later. Don't leave that with me. You will have one more reporter coming down.

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MR. FRIEDMAN: I made an assumption. I agree. This is the way it came from Mr. Keenan's office.

THE COURT: I used to work with a Judge whose favorite expression was, "Don't assume a goddam thing".

(In open court.)

(Jury enters the courtroom.)

(Continued on next page.)

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JACK ZANDER, resumed the stand
and testified further as follows:

THE COURT: All right. Go ahead.

CROSS EXAMINATION CONTINUED

BY MR. FRIEDMAN:

MR. FRIEDMAN: I think, your Honor, at the close you were looking at this document, sir.

THE COURT: Show it once again to the witness.

Q I refer to page 8, the section No. 5 over on to page 9 near the bottom of the page.

A Yes.

Q Part of Exhibit HH for identification.

A Yes.

THE COURT: Did Mr. Goldman or anybody else prior to your seeing this document in the prosecutor's office ever talk to you about that portion of the document which was referred to?

THE WITNESS: Only as I related it to a discussion that Mr. Goldman had with me.

THE COURT: That is all.

THE WITNESS: That is all.

THE COURT: All right.

Q Was the discussion that you had with Mr. Goldman at the time that he related it to you of the substance that you read on pages 8 and 9 of that document?

A Yes.

Q Is that an accurate summation of what Mr. Goldman told you at that time, as best you can recall?

A Mr. Goldman didn't go to any type of detail. The summation of it was basically what would be indicated here.

MR. FRIEDMAN: I renew my request, your Honor, if I could read a section of that to the jury.

MS. STRAUSS: Your Honor, I continue to object.

THE COURT: Yes. The objection is sustained.

Q I want to show you now, Mr. Zander, two exhibits, EE and FF for identification, and I ask you whether you can tell me what they are?

A Yes, I can.

Q What are they, Mr. Zander?

A Exhibit EE is a copy of the profit and loss statement submitted to Mr. Ronan for the years 1964 through '69 by Interborough News Company and myself, signing as president.

Q The other document?

A The other document is a letter from Interborough News Company by myself directed to Mr. John S. Pink, Executive Director of New York City Transit Authority, where in general I had outlined our future plans for Interborough News that would make it better for both the Transit Authority and Interborough News Company.

MR. [illegible]MAN: I offer both exhibits into evidence, your [illegible]nor.

THE COURT: Any objection?

MS. STRAUSS: I would like to see them first, your Honor.

THE COURT: Sure.

MS. STRAUSS: No objection.

THE COURT: All right. Mark them in evidence.

(Defendant's Exhibits EE and FF received into evidence.)

xx

MR. FRIEDMAN: May I read them, Judge?

THE COURT: Yes.

MR. FRIEDMAN: Exhibit EE in evidence is a letter addressed as follows: Dr. Ronan, Manhattan Transit Authority, 1700 Broadway, New York, New York.)

(Defendant's Exhibit EE was read to the jury by Mr. Friedman.)

MR. FRIEDMAN: Exhibit FF is dated four days later, July 14, 1970, and it is addressed to Mr. John S. Pink, Executive Officer of the New York City Transit Authority, 370 Jay Street, Brooklyn, New York.

(Defendant's Exhibit Ee was read to the jury by Mr. Friedman.)

Q Was everything in that letter correct?

A Yes.

Q Did you write it?

A Yes.

Q Did you intend for it to be relied upon by the Transit Authority in consideration of your request for rental relief?

A Yes.

Q Did you ultimately get rental relief?

A Yes.

Q Was there anything about the rental relief that you got that you were not entitled to?

A No.

Q Indeed your point of view was, Mr. Zander, that you were entitled to more relief than you got, isn't that so?

A No. I got the relief I requested.

Q That was the relief justified by your submissions?

A Yes.

Q Which of the options that you gave the Transit Authority was the one they elected?

A They elected the one that reduced the rent from 20 percent to 10 percent. And the minimum guaranty from $300,000 to $150,000.

Q Did you ever offer to corrupt Mr. Ronan?

A No, sir.

Q Did you ever offer to corrupt Mr. Pink?

A No, sir.

Q Did you tell Mr. Pink if things came out right there would be a little gratuity for him?

A No, sir.

Q How about Mr. Goldstein, did you put something in front of his face that would induce him to come in with a report that would support your application for a relief?

A No, sir.

Q How about that lawyer that you spoke of who was also involved in the consideration of your request for relief, did you ever put anything in front of him by way of an offer to help him or make him a benefit if he supported your application?

A No.

Q Who signed the new contract or amendment of contract which resulted from your application on behalf of the Transit Authority, do you remember?

A I don't remember.

Q Do you know a person named D. W. Muskopf?

A Yes.

Q Who is D. W. Muskopf?

A He works in our Sportservice office in Buffalo.

Q What is his position?

A I believe he is an assistant to Mr. Lockwood.

Q What was his position in 1970?

A I am not sure.

Q Is he something in the accounting department or the financial department, one way or the other?

A Yes.

Q Does he sometimes prepare financial statements with respect to operations of some of the companies?

A I am not sure.

Q How about Doris Oehler, is that a name that rings a bell?

MS. STRAUSS: I object on the grounds of relevancy.

THE COURT: I don't know. We will find out.

A Yes, I know the name.

Q Who is Doris Oehler?

A I believe Doris Oeler was in charge of the rental department.

Q Rental department of what?

A Of Sportservice.

Q In Buffalo?

A In Buffalo.

Q How about the name Cocco?

A I remember the name. The only thing I remember her being I think in charge of office supplies.

Q In Buffalo?

A Yes.

Q An employee of Sportservice?

A Yes.

Q I think when you testified on direct examination, Mr. Zander, you said you didn't become an officer of Interborough at the beginning of Sportservice's ownership of Interborough, do you recall that?

A Yes, I recall. I was not sure when I became an officer.

Q Isn't it a fact, Mr. Zander, that you became chairman of the board of directors at the very first directors meeting that took place after the acquisition?

A I don't recall when the first board of directors meeting was and how much later it was after the acquisition. In other words, I don't recall when I became on the board, whether it was a year after it started or six months or two years. I just don't remember.

Q Apart from that, isn't it a fact, Mr. Zander, that from the moment that that acquisition was made by your company, Sportservice, you were the man who was calling all the shots in the operation of that company, Interborough?

A I was the overseer from Buffalo from the beginning, yes.

Q And you were the ultimate authority subject to Mr. Jacobs, I am sure, but you were the ultimate authority, the person who had responsibility for the operatio of that newly acquired subsidiary, isn't that right?

A Yes.

Q I want to show you a group of papers, Mr. Zander, which have been marked Exhibit II for identification, and ask you whether you can tell me what they are, generally speaking. I don't ask you to give me a summary of each one.

Mr. Zander, if it helps you at all, all I am asking is whether you can identify them, not whether you can tell me what is in them, page by page or otherwise.

A Yes.

THE COURT: What are they?

THE WITNESS: They are the results of a series of board meetings where operations were discussed as problems, its recommendations, its thoughts and so forth.

Q These are minutes of board meetings of Interborough beginning at least in March 1964, right?

A Yes.

Q And you can identify them as such, right?

A Yes.

MR. FRIEDMAN: I offer them in evidence.

MS. STRAUSS: I object on the grounds of relevancy.

THE COURT: Mark them in evidence.

(Defendant's Exhibit II received in evidence.)

xx

Q I show you Exhibit GG for identification and again, Mr. Zander, without asking you to look at it page by page with a view to telling me what is on the pages, can you generally tell me what that group of documents consists of?

A These are tax returns.

THE COURT: For who?

THE WITNESS: For Jack and Edith Zander.

Q Those are returns and amended returns that reflect in part what you filed originally and changes you had to make as a result of certain audits and investigations that were done of your tax returns?

A Yes.

MR. FRIEDMAN: I offer those documents in evidence.

MS. STRAUSS: No objection.

(Defendant's Exhibit GG received in evidence.)

xx

Q I show you now a document marked Exhibit JJ for identification. Can you tell me what that is?

A Yes.

Q What is it, sir?

A It is an agreement between Interborough News and Jola Candy Company.

Q Pertaining to what subject?

A Pertaining to photocopy machines.

Q Is that your signature which appears on the second page of the exhibit?

A Yes, it is.

MR. FRIEDMAN: I offer that exhibit into evidence.

THE COURT: Who drew it up?

THE WITNESS: I believe it would have been drawn up by one of our legal staff.

THE COURT: Somebody on Mr. Kraus' staff in Buffalo?

THE WITNESS: Yes, in Buffalo.

THE COURT: In the Sportservice group?

THE WITNESS: Yes.

Q And that was done at your instruction?

A Yes.

Q Because it was for your interest to give the legal service required in order to consummate that agreement between Interborough and Jola, is that right?

A Yes.

(Defendant's Exhibit JJ received in evidence.)

xx

Q I want to show you Exhibit KK for identification and ask you whether you can tell me what that is.

A It is an agreement between Jola Candy Company and Photo Identification Company.

Q Did you ever see that or any other copy of that document before?

A I don't recall ever seeing -- I don't recall it.

Q Who was it, Mr. Zander, if you know, who was going to supply the Photostar photo machines and the IBI Copyphoto machines which are the subject matter of Exhibit JJ?

A Could you repeat the question, please?

Q Let me see if I can get to it another way.

Sometime in 1968, Mr. Zander, Mr. Goldman talked to you about some new thing that he wanted you to consider to put into the subways, isn't that right?

A Yes.

Q And he wanted you to consider putting in picture machines, maybe I am not phrasing it right, photograph machines, right?

A That took photographs of people.

Q People sit in front, put the money in, press the button and you get a picture?

A Yes.

Q He wanted you to consider putting that in and putting in photocopy machines which are reproduction copy machines, right?

A I don't remember that specifically.

Q If you look at Exhibit JJ in the first paragraph -- do you have JJ in your hand?

A Yes.

Q You see the document that you signed calls for the installation of Photostar machines, 20 of those, and I am going on towards the end, and a minimum of 15 IBI Copyphoto copy machines. Does that refresh your recollection that there was going to be a photocopy machine or a series of them put in?

A I am not certain. I specifically remember about the picture machines that take your picture but I don't specifically remember the discussion about this at the time. I just don't remember. It is not clear in my mind.

Q Was this something, and let's just confine it for the moment to the picture machines, as you call it, did Mr. Lynch on your behalf have these picture machines in the subways already?

A Not to my knowledge.

Q So this was something new?

A Yes.

Q And where did Mr. Goldman tell you he was going to get the picture machines that would be the subject of this contract and which would be installed in the subways?

A I don't remember if he specifically told me. He merely told me that he would arrange for it.

In other words, he either had arranged for it or would have arranged for it to get these placed into the subway.

Q He said he had a source for the machines?

A Yes.

Q Did he talk to you about what kind of a business deal there should be made with respect to the installation and operation of these machines in the subway?

A Yes.

Q What did he propose to you?

A He proposed that Interborough News get 24 percent of which we of course would pay the rental of 20 percent of the gross we are talking about. So that Sportservice -- Interborough News would make a 4 percent profit.

Q Let's see if we understand. If we reduce this to simple numbers, if you had a dollar of income in a year they would pay you, Jola would pay Interborough 24 cents, right?

A Yes.

Q Interborough had to pay the Transit Authority at that time 20 percent of the gross income of the machines, right?

A Yes.

Q So that would have been 20 cents that you would have to pay to the Transit Authority?

A Yes.

Q And that would have left you 4 cents for every dollar of income generated by these machines?

A Yes.

Q The other 76 percent of the income would go to Jola, right?

A Well, it would be divided between Jola and the company.

Q Jola and which company?

A The company he was dealing with.

Q Yes. He would have to share, Jola would have to share the remaining 76 percent of income with whatever company it was that was going to supply these machines?

A That is correct.

(Continued on the next page.)

2b pm

Q And between the two of them, Jola and the company that supplied the machines, they would have to take care of maintenance, they would have to take care of film, right -- and you have to answer for the reporter to get it down.

A Yes.

Q They would have to take care of everything that was necessary for the machines to be operable, right?

A I am not sure who had the responsibility of the collections.

Q There was one question in your mind then whether or not Jola or Interborough was going to make the collections?

A That is correct.

Q Or the photo company?

A Or the photo company. I don't know which one had that responsibility.

Q But everything having to do with operations, with maintenance, with upkeep, with location, with installation, every other aspect of this operation was going to be something done either by Jola or its machine supplier, not by Interborough?

A Correct.

Q And this right to install machines of this kind in the subways was something that you had covered under your contract with the Transit Authority, right?

A Yes.

Q This was a legitimate piece of business, wasn't it?

A Yes.

Q A perfectly proper division of profits?

A Yes.

Q You didn't think that you were taken, were you?

A No.

Q Now the income, the income that was generated from these machines, and they were installed, weren't they.

A Yes.

Q And they operated in the subways under your license for a number of years, didn't they?

A Yes.

Q The income from those machines formed a part of the income each year of Jola, isn't that right?

A Yes.

Q Part of the income which your daughters came to share ultimately, right? I am sorry, son and daughter, your children. Your son and daughter came to share in that ultimately, right?

A Yes.

Q Do you know what kind of a percent, for example, of Jola's gross business each year was represented by the income from this photo concession, if I can call it that?

A No, I don't.

Q You don't have any idea?

A I have no idea.

Q I will ask you just one question and I show you KK again for identification. Do you remember whether this is something you gave to Mr. Kraus or his assistant to assist him or her in the preparation of the document JJ, and I call your attention particularly to the dating on the two documents?

A I just don't recall it.

Q Now I want to cometo this $7500 payment that you testified to on direct examination. Do you remember that?

A Yes.

Q And do you remember your testimony about that phony invoice?

A Yes.

Q That you allegedly cooked up with Mr. Goldman?

A Yes.

Q That is Exhibit 3. I am going to read what it says.

"For services rendered in the design and display of candy machines in all subway outlets", that is what you cooked up, right?

A Yes.

Q Did it take you a long time to cook that up?

A No.

Q How long?

A A few minutes, maybe ten or fifteen minutes.

Q Ten or fifteen minutes of talking to Mr.Goldman by telephone to cook that up?

A No.

Q What is the ten or fifteen minutes?

A It was in two phases. I discussed it with Mr. Goldman and he gave me some rough idea and then after his phone call I put the wording in what would be -- what I thought to be a more acceptable form.

Q He gave you the inspiration and then you then expended the perspiration to write the words, is that a fair summary?

MS.STRAUSS: Objection.

THE COURT: Yes.

Q Mr. Goldman gave you the idea and you were the draftsman of the specific words, right?

A Correct.

Q Let me understand, when you and Mr. Goldman talked about the preparation of the wording for Exhibit 3 you knew, is it your testimony, that this money was going to be used to give to Mr. Wasserberger?

A In my testimony --

Q Did you know when you prepared the wording that is on Exhibit 3 that the money that was going to be generated by that document was going to be used to pay Mr. Wasserberger, according to what you understood?

A From what I understood from Mr. Goldman, yes.

Q So you knew that you were then engaged in the contrivance of a coverup for a payoff to somebody according to your testimony, right?

A Yes.

Q That is dangerous business, isn't it, Mr. Zander?

A Yes.

Q You certainly wouldn't want to be caught with that, would you?

A No.

Q You would certainly want to put in an invoice that would have as much chance as possible of escaping detection, isn't that so?

A Yes.

Q And that is what you spent this 15 minutes thinking about, is that right?

A Yes.

Q Is it true that you or that there is a rule or was a rule at Sportservice that any check that was required in an amount in excess of $5,000 had to be approved by Mr. Jacobs?

A I was not aware of that type of rule.

Q Whether you were aware of it or not is it true?

A To my knowledge?

Q Did you ever hear that even to the day you sit here now, that there was a requirement that for any check over $5,000 to be drawn it had to be approved by Mr. Jacobs, one of the Jacobs, let us put it that way?

A I did not know of any such rule.

Q My saying it to you now is the first you have ever heard of that?

A Yes. In other words, I know of no such ruling today.

Q And you have never heard anybody suggest that there ever was any such procedure or requirement, right, until I just said so?

A That is correct.

Q This Exhibit 3 incidentally, the money that was going to be gotten by this invoice you were going to take, as you testified, or somebody was going to take, as you testified, $5,000 of the 7500 and give it to Mr. Wasserberger, is that right?

A Yes.

Q And for whose benefit was that payment to be?

A To be for the benefit of Mr. Wasserberger if he were to receive the money.

Q For whose benefit in terms of what Mr. Wasserberger had done or might do to justify the receipt of that money, for whose benefit was it going to be, American Tel & Tel or for some company that you had in mind?

A It wasn't for a benefit that was to be gotten because the benefit had already been obtained.

Q By whom? By what company had the benefit been obtained?

A You mean who was the person benefitting or who was the person that gave the benefit?

Q Who was it who had been benefitted that justified the payment of $5,000?

A Interborough News Company.

Q Yes, according to your testimony, right?

A Yes.

Q In your history with these companies, Mr. Zander, had you ever seen invoices from Jola to Interborough?

A In the formal course of business, no.

Q Who billed whom? When Candy was ordered by Mr. Lynch, as you have testified, and then the supplier billed Jola, Jola turned around and billed whom?

A Interborough News Company.

Q Yes.

Now I want to show you this Exhibit 3. Do you see where it says "Sold to Sportservice Corporation Major No. 00099," is that what that says?

A Yes.

Q So you didn't bill Interborough at all, did you, by this bill?

A No.

THE COURT: All right, let's take a break.

(Jury left the courtroom.)

(Recess.)

(In the robing room.)

THE COURT: I checked with the grand jury stenographer and with the diary and in every case presented on the day referred to on the notation there, one, that is not a reporter from this district and, two, this case was not being presented that day.

MR. FRIEDMAN: As I said, I thought in any event it is a state grand jury matter.

THE COURT: I am not saying that. I just want to be sure. You are willing to take my representation that I went upstairs and did it?

MR. FRIEDMAN: I will be more than happy to do it.

(In open court; jury present.)

THE COURT: I finally discovered why ministers and police make their sermons shorter in the summer time. It is awfully hot.

Q We were talking, Mr. Zander, about the legend or the description or the purpose that was going to be put onto this Jola invoice that was going to generate this $7500 and it reads "For services rendered in the design and display of candy machines in all subway outlets."

Is that really the best you could have done to get a description that would tend to assure that you wouldn't be detected in this?

A I thought so.

(Continued on next page.)

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Q Did it ever occur to you to put down something like price adjustment for candy, and just then put down a number $7500 or something like that and use that?

A No.

Q That didn't occur to you?

A No.

Q You had to tape this invoice, you know you had to take this invoice when it was ultimately received and go get it passed to the accounting people of Sportservice, right?

A No. That is not correct.

Q Didn't somebody when it came in have to look at it?

A This particular invoice was paid before the invoice was issued.

Q I remember that,Mr. Zander. I remember your testimony that you got the check before you got the invoice. I have in mind,Mr. Zander --

MS. STRAUSS: Objection to the comment, your Honor.

THE COURT: Go ahead.

Q I want to know, though, whether when you made up the content of the invoice you realized that when it was sent or received in Buffalo somebody in an accounting capacity would look at it?

A Yes.

Q You knew that?

A Yes.

Q The people who would look at it in accounting were people who were skilled and experienced in looking at invoices to make some kind of a check or determination whether or not it seemed to be a proper or regular invoice, isn't that right?

A Yes.

Q There was more than one person that did that, wasn't there?

A I don't know how many people.

Q In the course of the systems of Sportservice these things in the ordinary course progressed through various hands before they are approved or entered in ledgers or allocated to one expense or type of expense or another, isn't that so?

A The first procedure is approval.

Q All right.

A After that, after an invoice is approved the person approving it, in this instance myself, does not again see the invoice.

Q It goes someplace else?

A Yes.

Q You can't protect this invoice, can you, from whatever inquiry would be generated by the peculiarities if there be such, that are on its face?

A Yes.

Q You set it adrift through the Sportservice accounting department, anybody can look at it and if they have a question they will raise the question, is that right?

A Yes.

Q Did anybody raise a question to you about this?

A No.

Q The fact of the matter is that the people in the Sportservice accounting department, they knew Jola, right?

A Yes.

Q They had been making out checks to Jola for several years by this time, isn't that right?

A Yes.

Q Always for candy, or for commissions in connection say with photograph machines, right?

A Yes.

Q Had they ever had an invoice that said for services rendered in the design and display of candy machines at all subway outlets?

A No.

Q Did you tell anybody in the accounting department in connection with this invoice that Jola had suddenly gone into a new business?

A No.

Q You say in your testimony that it was Goldman, Mr. Goldman who suggested to you that maybe Mr. Wasserberger should get five, is that what you said?

A Yes.

Q You understood that meant Mr. Wasserberger should get $5,000, right?

A Yes.

Q This conversation took place when, what year?

A In December of 1970.

Q December, 1970.

U.S. Candy started in '66?

A Yes.

Q You knew Goldman, you knew U.S. Candy in '66?

A Yes.

Q Jola started in '67?

A Yes.

Q You knew Goldman's interest in Jola in 1967?

A Yes.

Q In '68 you knew as much about Jola as you ever knew?

A Yes.

Q In '69 you knew all about Jola and who had an interest in Jola, right?

A Yes.

Q You knew exactly what the company did?

A Yes.

Q You don't have any doubt, do you, Mr. Zander?

A No.

Q In 1970 you knew precisely what Jola was?

A Yes.

Q You knew who owned it?

A Yes.

Q You knew what it did?

A Yes.

Q When Mr. Goldman as you say suggested to you that it would be appropriate to get five, for Wasserberger, what did you say to him?

A I asked him how he suggested handling it.

Q What did he say to you?

A He told me that we, a check should be issued from Interborough News to Jola for $7500 to cover the taxes of the children that the $2500 would roughly cover the taxes of the children and Jola would charge Interborough News for that Interborough News would in turn issue a check for that amount.

Q Then the money would come to Jola?

A Yes.

Q And?

A And what? I don't understand. What's the question?

Q How was it going to get to Mr. Wasserberger, did you talk about that?

A No. I didn't

Q You never talked about it?

A Never talked about it.

Q When Mr. Goldman as you say made this suggestion that Interborough pay a check to Jola and that Jola should issue a bill to get this $7500, didn't you say to him in words or substance, what are you talking about, what are we going to do that for, I will get the money right out of Interborough?

A I didn't know how, I don't understand.

Q Look, Mr. Zander, you said before that the benefit that was received here had already been received by Interborough, right?

A Yes.

Q All right. Now it was going as your testimony is meant to indicate, it was going to pay for the fact that it had received a benefit, right?

A The payment of appreciation.

Q Appreciation. Right.

Why should Jola be involved in the payment of an appreication for Interborough's benefit. My question is, did you say that to Mr. Goldman?

A No.

Q It never occurred to you to say that to him?

A No.

Q You have, Mr. Zander, testified on this subject before, is that right?

A Yes.

Q I want to read to you, and if the Court will permit, I will stand alongside you so you can see what I am reading. I simply put to you the question ultimately, were you asked these questions and did you give these answers at any time heretofore.

MS. STRAUSS: May we have the reference, please?

THE COURT: Yes.

MR. FRIEDMAN: I will show it to you.

THE COURT: 35 something, page something.

MR. FRIEDMAN: 247, Judge.

THE COURT: Page 247 of 35 what?

MR. FRIEDMAN: I think it is 3520 but it is clipped.

MS. STRAUSS: 3520, your Honor.

THE COURT: All right.

MR. FRIEDMAN: "Q Mr. Goldman told you that if you were able to obtain the results you wanted the reduction in rent would be predominantly through the influence of Sy Wasserberger?

"A And we should show our proper appreciation in the way of money.

"Q At the time of the initial conversation you didn't discuss money, is that right, or did you?

"A Not amount, no.

"Q Did there come a time when you did discuss the amount,?

"A Yes. Yes, could you tell us what the amount was suggested to be given to [illegible] Wasserberger?

"A The amount suggested was -- he referred to it as five, my meaning $5,000.

"Q Did you have any discussion about how you would obtain the money?

"A I asked Mr. Goldman how we could do -- how we could accomplish this. So he then indicated that we could do it through a company that he was basicaly, I believe, president of or in charge of or controlled called Jola Candy Company."

Q Were you asked those questions before and did you give those answers?

A Yes.

Q Didn't you know in December, 1970, all about Jola and the fact that Goldman was an officer and who owned it?

A Yes.

Q Let me ask you this, Mr. Zander:

In this conversation about $7500 you say $2500 was to be for taxes, is that right?

A That's what Mr. Goldman told me.

Q That's what you heard, right?

A Yes.

Q Did you understand what he meant by that?

A I only thought he meant that the taxes of the children on the last income, as such, would be between state and federal about that amount, about one-third.

Q Let me see if I can take this down the steps.

According to you Goldman said we will get $7500 which Interborough will pay Jola, right, the first step?

A Yes.

Q We don't need $7500 for this supposed payment, we only need 5,000?

A Yes.

Q There is a $2500 amount left over, right?

A Yes.

Q That meant that Jola was going to receive according to what you have testified, $7500 worth of income, right?

A Yes.

Q Which would be subject to tax, right?

A Yes.

Q And Mr. Goldman was saying to you and what you understood was that he wanted to be sure as you say it, that there was enough money received by Jola that any taxes that were connected with that money could be paid, right?

A Yes.

Q That also meant one more thing, didn't it, Mr. Zander, and that is that if any money were to be put out by Jol[illegible] to Mr. Wasserberger as you have testified, that i[illegible] would not be deducted as an expense, isn't that rig[illegible]

A I didn't give that any thought.

Q Let's think about it now.

If you have $7500 of income as you understood it, that would be between state and federal taxes as you said, about a one-third tax, between $2500, but if there was $7500 worth of income and if it was contemplated that $5,000 would be paid out and charged up as an expense, then their only would have been$2500 worth of net income, right?

A I don't --

Q Tell me whether you agree with that analysis now.

A Say that again.

Q If there was $7500 of money coming into Jola pursuant to this invoice, right?

A Yes.

Q That would be $7500 of taxable income to Jola?

A Yes.

Q If $5,000 of that was going to go out, to be paid out to Mr. Wasserberger and taken as an expense that would only leave a net of $2500 of income for tax purposes, is that right?

A That is correct.

Q There wouldn't be a $2500 tax on $2500 of income, would there?

A That is correct.

Q All right. It was clear to you as it is clear now that the scheme that you described is not one that would have involved any deductions for federal income tax purposes of $5,000, isn't that right?

A It is clear at this moment, yes.

Q Clear at this moment, isn't it.

Did you ever talk to Mr. Goldman about the need for Christmas gifts to various people that had been helpful in the course of the operation of your business?

A Mister, we as a policy gave out modest Christmas gifts to people.

Q Who is we?

A Throughout the country. Sportservice.

Q In Buffalo?

A Yes.

Q I am talking about New York, Mr. Zander. How about people who worked for you or your subsidiary Interborough in New York, did you ever talk about Chrismas gifts to them?

A The only reference, and I am not sure if it specifically mentioned for what purpose, Mr. Goldman on certain, on different occasions, two or three yearly occasions, I don't recall, requested from me a list of the employees of Interborough News Company.

I sent them to him.

Q When you say the employees, you are talking about people who worked in what capacities?

A The general people of Interborough News, was everyone that would be on the payroll which would include everybody employed by Interborough News.

Q Something in the order maybe 70, 80 people, right?

A Yes.

Q Mr. Goldman wanted a list of those names?

A Yes.

(Continued on next page.)

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Q You sent him a list, right?

A What I sent him, the tabulating department has a list like that and they may just-- made just like a copy and I sent him the names as part of the list.

Q You took it of a printout?

A Yes.

Q It has as is ordinarily available, you have to press the right button and out comes everybody on the Interobrough payroll?

A Yes.

Q You sent it to Mr. Goldman?

A Yes.

Q Is that related to the question of any discussion between you having to do with Christmas gifts.

A I don't recall Mr. Goldman asking, ever telling me exactly what he wanted it for.

Q Did you ever ask him?

A No.

Q Did you ever --

A I don't remember.

Q Did you ever hear it said that Christmas gifts were given to Interborough employees?

A I know I received one, I know I and certain people received them from Mr. Goldman.

Q Received gifts?

A Yes.

Q What kind of gifts did you receive?

A I remember receiving smoked turkey, and I think one smoked bacon or something like that.

Q Who else do you know about received gifts from Mr. Goldman?

A I think if I remember correctly he sent those gifts to Max Jacobs and Jerry Jacobs I think.

Q Anybody else in the Sportservice or Emprise group?

A Not that I can recall.

Q Did you ever hear anything about Christmas gifts in forms other than turkeys or bacons, that is to say cash gifts at or about Christmas time?

A That Mr. Goldman gave to anyone you mean?

Q Or that Jola gave?

A No.

Q This is the first that you hear of it now, that that possibility existed?

A Yes.

THE COURT: All right. Read back the last question and answer.

(Record read.)

THE COURT: In answering that question you knew that the possibility was the possibility of employees of Interborough getting Christmas gifts, is that right?

THE WITNESS: Yes.

THE COURT: The question was first asked to you by counsel as to the possibility of Jola or Mr. Goldman giving out Christmas gifts to anybody and you answered well once I gave him what amounts to a printout of all the employees of Interborough.

THE WITNESS: Yes.

THE COURT: But this is the first time you heard even a possibility that those employees got Christmas gifts, is that right?

THE WITNESS: By Mr. Goldman asking for the printout there was a presumption on my part that it was going to be used for some type of Christmas gifts that he would choose to give people. I don't specifically remember him saying I am going to give all these people gifts as such, I don't remember that specifically. The fact that he asked for the names and at one point he said you know it is Christmas time, but he didn't specifically say I am going to be giving gifts to everybody. In other words, I can't --

THE COURT: To everybody?

THE WITNESS: Or anybody.

THE COURT: How about to anybody?

THE WITNESS: I know he gave them to somebody. I was a participant and certainly others.

THE COURT: You got a small turkey. All right.

BY MR. FRIEDMAN:

Q In any event, Mr. Zander, the state of your mind at the time was that you presumed that that's what exactlyhe had in mind?

MS. STRAUSS: Objection.

THE COURT: He laready answered it. You can answer it again.

A The state of mind, yes.

Q Do you happen to know,Mr. Zander, whether after you put that invoice, Exhibit 3, into the accounting department, which was a few days after you had seen to it that a check for $7500 went out, do you happen to know whether Jola showed any disbursements for Christmas expenses?

A No. I would, no.

Q Did you ever talk to anybody about that possibility?

A No. I didn't.

Q Did you ever talk to the government about whether or not after a receipt of the $7500 that you have been testifying about, there were payouts, that is to say moneys that went out of Jola with any indication that they were for Christmas expenses?

A No. I told the government the only thing I ever received at any time was at the end of the year what is referred to as a K-1 statement. That's the only --

Q K-1 statement. What is that?

A Something that tells the amount that each of the children are to report for tax purposes.

Q That was sent to you by Jola showing the amount paid to each of your children by way of distribution from Jola during the taxable year?

A Yes.

Q By the way, did you tell the government about this printout that you sent to Goldman?

A I believe I did.

Q Did you tell the government that the state of your mind was that the printout was raised in connection with the Christmas gifts or the potentiality of that and that your understanding or believe was that the printout was wanted for the purpose of identifying the people who would be recipients of Chirstmas gifts, .

did you tell anybody in the government that?

A I think so.

Q When?

A Pardon?

Q When?

A I am not sure. I think it was in the, I believe I had mentioned it in testimony or in discussion with the first U.S. Attorney, Mr. Schwartz.

Q Mr. Schwartz. That goes back into the year 1975, is that right?

A Either that or early '76.

Q You saw Mr. Schwartz in conjunction, did you not, with the grand jury proceedings?

A Yes.

Q Your appearance before a grand jury?

A Yes.

Q If I tell you that your grand jury proceedings as far as I can see took place in or about February or March, 1975, would you then date your disclosure to Mr. Schwartz to be at or about the same time?

A Probably.

Q Now you testified also, Mr. Zander, about a call that you received from Mr. Goldman on the subject of officerships or directorships that he held or might have held in some of our companies, do you remember that testimony?

A Pardon?

Q I am sorry, I will say it again. You testified before about receiving a call from Mr. Goldman at some point in time wherein he inquired of you with respect to officerships or directorships that he held, do you remember that testimony?

A Yes.

Q Where you said that he asked you to something, do you remember that?

A Yes.

Q Now, please do me the favor of telling me when that call was, what you recall he said to you, or asked you and what you said to him.

A I believe that was the call in September of 1973 where he called me and indicated, told me that he wanted to resign from Interborough News Company.

Q Yes. And what happened then?

A I made the necessary arrangements to effect his resignation.

Q You had his resignation, didn't you?

A No. I had his resignation but it wasn't dated. It is an undated resignation.

Q All right. It was signed?

A Yes.

Q You had had it since 1967, right?

A Yes.

Q So you directed somebody to put a date on it?

A That is correct.

Q He had resigned in September, you say of 1970?

A 1973, I believe that's approximately right.

Q Did there come a time when he spoke to you about that again?

A Yes.

Q When was that?

A I believe it was in roughly about the spring of 1964.

Q The spring of 1964?

A I believe so.

Q I don't want you to misstate; do you mean 1974?

A I am sorry, '74.

Q Something like five or six months later?

A Possibly, yes.

Q What happened then? How did he communicate?

A He called me. He called me and told me that I might be, I might be getting a phone call from the news media asking whether he was an officer of any of the

Sportservice interrelated companies. And that if such an inquiry was made to me I was to tell them whether he was an officer or was ever an officer and I was to tell them no.

Q Did you say to him, wait a minute, what's the sense of that, I mean it's a matter of public record, did you say that to him?

A No.

Q What did you say to him?

A I told him that I couldn't do that, I would have to check all the records and whatever the record reflected I would have to so advise because all of this was a matter of record. I told him I wouldn't volunteer the information, but it was, if it was specifically asked I would have to tell them whatever the record reflected.

Q Why would you have to check the record, Mr. Zander, when he had spoken to you, you say in September, of the preceding year within about six months and asked to resign?

A I wasn't sure at that time whether he might be an officer of any of the related companies such as New York Sportservice, Inc., in which he had, that interest through the Pelham Bay Park, that was on the New York Sportservice.

Q Did he have an interest in New York Sportservice, Inc.?

A He had it in a subsidiary, Pelham Bay Park.

Q Was there a separate corporation called Pelham Bay Park?

A Pelham Bay Park was in New York Sportservice, Inc., Pelham Bay Park is called a unit, the unit was under the corporation of New YorkSportservice, Inc.

Q The unit was the location of the concession?

A Yes.

Q The concession was in the name of New York Sportservide as a licensee?

A Yes.

Q Your question was, that you thought maybe he was an officer of New York Sportservice?

A I just wasn't sure of anything. I wanted to be 100 percent certain of what he was or wasn't. So, if I remember correctly I may have told him to hold the line because it was only a matter of a couple of minutes. I walked down to the legal department and had them open up the book of the only three possible corporations, which would have been New York Sportservice, Interborough News Company, it may have slipped my mind momentarily that he had even resigned orwas. I wasn't, it was, I wasn't concentrating. I wanted to just make sure. I even checked Sportservice Corporation.

Q You thought he could be an officer of the parent corporation?

A I didn't think so. I just want to be 100 percent sure.

Q It was not so certain in your mind that he culdn't have been, that you didn't have it checked, is that right?

A I checked it because, just as easily, it's in the same book.

Q Yes, sir. Did you also check to see whether he was a director of Sportservice?

A I checked officer and director.

Q Officer and director. All right, sir. While he was hanging on the telephone you did this check and you found nothing?

A I told him exactly what had transpired. I said you were never an officer of New York Sportservice, you were never an officer of any other corporation, the only thing you were an officer of was Interborough News Company. At that time I made a notation of the dates. I told him when he became an officer, and whenhe resigned.

Q That ended the conversation?

A Yes. That ended the conversation.

Q I show you Exhibit LL for identification and I ask you to tell me what it is or if you can tell me what it is.

A It is an employment agreement. Yes, I remember it now.

Q What is it, Mr. Zander?

A There was a provision where he could not enter into --

Q He being Altman?

A Mr. Altman.

Q Right.

A He wanted, he was giving consideration to opening some sort of a bar, nightclub and Main Street, not too far from -- it was on Main Street between Tupper and Chippewa Streets. And in order to do this he needed a consent from Sportservice or from the subsidiary of Sportservice that signed that. We gave him that consent.

Q Let me see if I can just reconstruct this. When Mr. Altman sold you his amusement park he took as I think you said an employment contract with one of the companies to manage the park, right?

A Yes. There was to be a certain division of profits on that venture between yourselves and

Mr. Altman, right?

A Yes.

Q One of the things that he agreed to as part of his agreement was to give you a negative covenant if I can use that expression.

THE COURT: I don't know if he understands it.

MR. FRIEDMAN: I will try to do better.

Q A negative covenant?

A Where he couldn't compete.

Q Where he couldn't compete with you or engage in similar kinds of business, right?

A I believe so.

Q This Exhibit LL, a memorandum atleast is the release of Mr. Altman from that restriction, isn't it?

A Yes.

Q You signed it on behalf of Williamsville Amusement Corporation and Glen Amusement Corporation, right?

A Yes.

Q This is the release to the man who gave you the $30,000 gift, right?

A Yes.

Q As the result of this release he was able to go into a business that he would not otherwise have been able to go into under his agreement?

A Yes.

MR. FRIEDMAN: I offer that document into evodence and I have no further questions, your Honor.

THE COURT: All right. Mark it in evidence.

MS. STRAUSS: No objection, your Honor.

xxx (Defendant's Exhibit LL was received in evidence.)

REDIRECT EXAMINATION

BY MS. STRAUSS:

MS. STRAUSS: Can we have this marked as Government's Exhibit 57.

xxx (Government's Exhibit 57 was marked for identification.

BY MS. STRAUSS:

Q Mr.Zander, I show you what has been marked as Government's Exhibit 57 for identification. Would you read that?

A All right.

Q Can you identify that, sir?

A It is my resignation from Interborough News Company.

MS. STRAUSS: The government offers that into evidence.

MR. FRIEDMAN: No objection.

THE COURT: Mark it in.

xxx

(Government Exhibit 57 was received in evidence.)

MS. STRAUSS: May I read it, your Honor?

THE COURT: Yes.

(Exhibit 57 in evidence was read to the jury.)

Q You testified several times or cross examination that you resigned from your various officerships at Sportservice and other related companies in April, of 1975.

A I thought it was in April.

Q Having looked at this does this change your recollection with respect to that?

A Not for certain. I am not sure whether I thought I had resigned from all of them but I don't remember. It could have been March or April, I just don't remember.

Q Did you resign from those various officerships all in one day or did you do it seriatum?

A I know I resigned from, I know there was one day I resigned from perhaps a dozen different ones, some of them that I don't remember the names of because Mr. Kraus just put them all in front of me and I just signed them as fast as he put them in front of me.

Q Did that all occur on one day?

A Yes.

Q Looking at this now this having occurred on March 3rd, '75, did you then resign your various officerships on that day?

A It very well could be.

Q That's about two months earlier than you had been telling the defense counsel.

MR. FRIEDMAN: I object, your Honor.

THE COURT: I will permit it.

Q That is about two months earlier than you had been saying to defense counse on cross examination?

A Yes. I had thought April. I was not, I don't think I ever indicated, I may have indicated April. It may have been March.

Q The beginning of March, looking at that?

A Based on this.

THE COURT: It is dated March 3rd.

A Yes.

Q You first as you testified on direct and cross examination, you first told Mr. Jacobs in the end of 1975 that you had committed the crimes that you described in a greater detail in your direct examination, is that

right?

MR. FRIEDMAN: Objection. It misstates the record, Judge.

THE COURT: Is that right or not?

THE WITNESS: Would you repeat the question.

Q Was it your direct testimony that it was in late 1975 that you first told your employer Jerry Jacobs about the Jola Candy Company profits that your children had been taking?

A Yes.

Q When was it that you first came to see the federal prosecutors in this case?

A I believe it was in approximately in January of 1975.

Q Do you recall the precise date in which you first testified in a grand jury in this case?

A I believe it was in February. It might have been --

Q Do you remember the precise date, Mr. Zander?

A I think it may have been the 5th but I am not positive.

Q I will show you what's been marked as 3520, does that refresh your recollection as to the precise date?

A Yes. February 20th.

Q When was the next time that you testified in a grand jury about this matter, if you recall, do you remember the exact date, the next time, sir?

A No. I don't recall the exact date.

Q Does that refresh your recollection as to the exact date?

A Yes.

Q What date was that?

A February 25th.

Q How many days later was it that you resigned your officerships at Sportservice?

A Approximately, a week later.

Q Do you remember the exact date on which you signed the note of indebtedness to Sportservice that had been reviewed in great detail on both your direct and cross examination?

A I believe that may have been in April.

MR. FRIEDMAN: If your Honor please, Judge, may we approach the side bar?

THE COURT: Sure.

(At the side bar.)

MR. FRIEDMAN: I am referring your Honor to Page 183 of his direct testimony, when he talked to Jerry he talked about his dealings with the candy corporation and the date as the fall of '74. Here you have in the face of what I said several times asked him whether he had first made this confession in '75.

MS. STRAUSS: I misspoke, your Honor.

MS. FRIEDMAN: The witness also adopted that he has agreed to it. I want the Court to understand that.

THE COURT: All right. That is on Page 183.

MS. STRAUSS: I will correct it, your Honor.

MR. FRIEDMAN: For the purpose of correction, I objected to theputting it. I objected to the question, to putting the question because it misstated the record but it's gone beyond that now. The witness has agreed, and I don't think that you wanted to correct it now if that's what you are talking about. He says it was a year later.

MS. STRAUSS: I thought I said 1974, if I didn't I would like to correct it.

THE COURT: All right.

(In open court.)

Q I apparently misspoke. When I was referring to the confession you made to Jerry Jacobs what was the date and year as you best recall of the confession that you made to Jerry Jacobs?

MR. FRIEDMAN: If your Honor please, I object to that question or statement or whatever you call it.

THE COURT: Well, the statement part I guess is objectionable. It is out now. Go ahead. Answer the question.

A The latter part of 1974.

Q Very well. Now, we had gotten to the point of talking about that moment in time when you signed the note of indebtedness and I asked you whether you recalled it, approximately when was that?

A I believe that was approximately April, 1975.

Q That's how you testified on cross examination?

A That's what I remember.

Q Showing you what is already in evidence, Defendant's Exhibit K, does that change your recollection as to the date on which you signed that note of indebtedness?

A Yes. It does.

Q When did you sign it?

A The same day that I signed my resignation.

Q What date is that, sir?

A March 3rd, 1975.

MS. STRAUSS: Your Honor, may I read the

exhibit to the jury. I believe it was not read at the time it came in. It is Defendant's Exhibit K.

THE COURT: It is in evidence?

MS. STRAUSS: Yes.

THE COURT: Read it to the jury.

xxx (Defendant's Exhibit K was ready to the jury.)

Q After you resigned your officership from Sportservice, who became the president of the corporation?

A No one immediately became the president. Eventually I believe in June of that same year a Mr. Donald Carmichael, I believe.

Q Who was Mr. Carmichael?

A He was an individual brought in by Mr. Jerry Jacobs.

Q From inside Sportservice or from the outside?

A From the outside.

Q Was that as the result of a search that went on until the time they found him?

MR. FRIEDMAN: I object.

THE COURT: I don't know where it is going. I will sustain the objection on the grounds of relevancy.

MS. STRAUSS: Your Honor, if I may either argue the point or say at the side bar where we are going, please.

THE COURT: Sure.

(At the side bar.)

MS. STRAUSS: Your Honor, counsel made much on cross examination about the time that elapsed between the resignation of this man as an officer of the corporation and the time he actually left the company. I would like to bring out to the jury what was going on during that interim, that left that gap of time. I think it is highly pertinent in light of the extent of cross examination.

MR. FRIEDMAN: If your Honor please --

THE COURT: A search for somebody else to take over, I don't know where that comes in.

MR. FRIEDMAN: I suppose if you found a thief in your house, until you could replace him with an honest servant who would leave the thief there by that standard, I think that is amazing.

THE COURT: I don't think so.

MS. STRAUSS: I think counsel is making an argument to the jury. The corporation may have a need to have a president such that it can't throw the man out the door at that moment. I think the jury has a right to know that they were making efforts to replace the man.

THE COURT: I don't see its relevance.

(In open court.)

BY MS. STRAUSS:

Q Mr. Zander, you were cross examined about the lapse in time between your resignation as an officer of Sportservice and the time you actually left the company in November, 1975. What if anything was actually said to you during that period of time about your future in the company?

A The president wanted me to gradually and in an orderly fashion transfer my responsibilities to various individuals in the corporation asking my recommendations as to who might best fit each of those responsibilities.

Q Did you do that, sir?

A Pardon, yes, I did.

Q How many people ultimately replaced you in the company?

A I believe three or possibly four people took over my responsibilities.

Q Who were they and what duties did they have to assume to replace you?

A A new man , one who had previous experience with a competitive company took over my baseball responsibilities. The person who had, a Mr. Kelly who had airport responsibilities took over the what we call the building responsibilities, sporting events in buildings, Ms. Chasen took over the responsibilities I had in dog tracks, a Mr. Szefel took over my responsibilities of concession of theaters and bowling alleys and miscellaneous, that included Interborough News.

And then I had some responsibilities in certain types of negotiations and a Mr. Rozanski took over those responsibilities.

Q Mr. Zander, you werequestioned at length during your cross examination about the contract that you entered into with Sportservice which presently pays you I think you testified about $3,000 a month?

A That is correct.

Q Can you tell the jury why Sportservice was willing to enter into a non-competition contract like that with you?

MR. FRIEDMAN: Objection to the form of the quetion.

THE COURT: Sustained.

A Does that mean I can answer it?

THE COURT: No. You cannot answer it.

THE WITNESS: I am sorry.

Q Mr. Zander, what if any discussions have you had with other companies about the possibility of your obtaining employment with a competitor of Sportservice?

MR. FRIEDMAN: Objection.

THE COURT: Sustained.

MS. STRAUSS: May I read to the jury the non-competition contract that is already in evidence?

THE COURT: If it is in evidence you can read it to the jury, sure.

(Ms. Strauss read the non-competition contract to the jury.)

MS. STRAUSS: Your Honor, would this be a convenient time to break for the day?

THE COURT: Yes.

All right, ladies and gentlemen, it is a long weekend. Have a good one. Be prepared to come back here Tuesday.

(Jury excused.)

THE COURT: Counsel, would you stay here. I will be back in a minute.

(Recess.)

(In chambers.)

THE COURT: There was one thing you wanted to take up.

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MR. FRIEDMAN: The witness is still sitting out there, Judge. I was going to ask you to give him an instruction that he not communicate with the counsel over the weekend.

THE COURT: Why?

MR. FRIEDMAN: Well --

THE COURT: He is entitled to communicate with counsel.

MR. FRIEDMAN: I think with the circumstances of this case that he ought not do so.

THE COURT: He can talk to them. The last thing you want to do is put a witness on the stand and ask him questions and he wouldn't know the answers.

MR. FRIEDMAN: As your Honor well knows the witness has apparently been schooled extensively over the years in advance of his testimony, I think he said at least eight meetings with Ms. Strauss not to count meetings with other people. I will let your Honor decide.

THE COURT: He can still talk to them. Mr. Lippe, do you know anything about this document which should be marked as, or will be deemed marked as Cout Exhibit No. 2?

MR. FRIEDMAN: Can we have Mr. Lippe under oath, if your Honor please?

THE COURT: If you want him under oath, sure.

MR. FRIEDMAN: I do.

MARTIN LIPPE, **having been first duly sworn** by the Clerk of the Court, was examined and testified as follows:

BY THE COURT:

Q There is a document there which was marked Grand Jury Exhibit 49, with someone's initials under it, and the date 3/6/75. Have you ever seen that before, a group of papers?

A The folder I have seen. I have not seen -- yes, I have seen this.

Q You have seen it.

What is your background, education?

A I am a graduate of NYU, School of Commerce degree, B.S. in Accounting.

Q In accounting. You recognize these documents under here to be accountants' worksheets, don't you?

A Yes.

Q That's what they generally look like?

A Yes.

Q Did you ever go through them?

A No.

Q You never did?

A No.

Q Where did you see them?

A On the desk of Carl Bornstein, on the desk, the office of the Special State Prosecutor.

Q Were you there when they were turned over to Mr. Bornstein?

A No, I was not.

Q Do you know where they come from?

A No, I don't. I shouldn't say, Mr. Goldstein ordered work papers.

Q Do you know for example that there were entries such as this since 1969, it says under nail-clippers pinball games, magnifying glasses, since 1969 Priscilla Alton ships to 16th Street, Bills Jola and Jola bills Interborough, ten cents to Jola, 12-1/2 cents to Interborough. Did you know that?

A No.

Q Did you ever conduct an audit by yourself or with any auditing firm?

A Yes, as part of my job. Not per se but the investigation of an audit type nature, yes.

Q If you came up with information such as that would you be surprised?

A Such as what you just read?

Q Yes.

A I don't know if the word surprise -- I don't know.

Q In doing an audit, say for Peat, Marwick & Mitchell, would they come across such information, if they did a complete audit?

A I don't know.

Q If you were doing the audit for them, would you?

A If I had the documents to support that, I guess I would.

Q All right.

Did you know about Paragraph 5 of the report from Mr. Goldstein to Mr. Ronan, did you ever see that?

A I velieve I have seen the report, yes.

Q Did you ever ask for the backup material for that?

A No.

Q But you knew that the special prosecutors' office had?

A Yes. Would you like an explanation as to the events surrounding that?

Q Sure.

A Ms. Strauss and myself had gone to the Department of Investigation looking for their file on this particular matter, the Department of Investigation informed us that their entire file was at the state prosecutor's office. There was certain information that Ms. Strauss wanted for the preparation of a trial and I went to the special prosecutor's office to see if they had it. Mr. Bornstein on his desk was a group of legal papers and that folder that you have before you, sir. And it was stated to me that this is what is before, Mr. Bornstein.

Q Did he let you have it?

A No. He asked me if this is a document that Ms. Strauss wanted or would want and I said I didn't know, that I would have to speak to her about it.

Q All right. Then what happened?

A I went back to the office and spoke with Ms. Strauss about it.

Q What did she say?

A She said at this time she didn't think so.

Q Then you didn't go back and get it?

A No.

Q Did you get any other files at that times?

A No.

THE COURT: Is there anything else that you want?

MR. FRIEDMAN: May I put the questions to the witness?

THE COURT: Yes.

BY MR. FRIEDMAN:

Q Do you remember, Mr. Lippe, there came a time when attorneys for the defendant came to a room in St. Andrew's Plaza, where the U.S. Attorney's office is, and looked at files including some that came to the government from the Transit Authority?

A Yes.

Q Do you remember that there was a method worked out whereby if they wanted copies of certain documents they indicate to you which documents they wanted and you caused them to be reproduced?

A Yes.

Q Right.

You made it a point, did you not, to take an interest in what documents the defendants were having reproductions, isn't that right?

A Yes.

Q You knew for example that one of the documents that the defendants called upon to be reproduced was the so-called Goldstein audit report, I think the date is

June 16, 1970, looking at them upside down, you knew that, didn't you?

A I don't specifically recall, that that was one of your documents, ine of the documents that you had photocopied for yourself, I don't recall that.

Q Do you remember in any event that earlier in this trial I have said on numerous occasons to Ms. Strauss in your presence that the one document I was sure was going to go into evidence in this case with the Court's concurrence of course was the auditi report issued by Mr. Goldstein, correct?

A Yes.

Q You were very familiar with the fact not only at the time of trial but for at least the last two years that that audit report disclosed on its face that Goldman had an interest in Jola, and that Goldman was also an officer of Interborough and a director and reportedly an owner, you knew that,did you not?

A Sure.

Q You knew that that report said that that was not a proper, in the view of the Transit Authority, a proper cost to the extent that there was an excess cost for consideration in connection with the application for rent reduction, right?

A Yes.

Q In your experience as an auditor you know very well that audit reports --

A I am not an auditor.

Q As your experience as an Internal Revenue, agent if you will, you know very well by reason of that experience and your training that people who prepare reports such as the Goldstein report do so on the basis of work papers, is that right?

A Yes.

Q That whaever material is contained in the ultimate report is substantiated or substantial by work papers, isn't that right?

A Yes.

Q You knew that there were work papers underlying the contents of the report?

A I didn't know that until the day that I saw the file on Mr. Bornstein's desk.

Q At the very latest Mr. Lippe on that day you knew that there were working papers underlying and substantiating the content of the Goldstein report?

A Yes.

Q And what day was that?

A I don't recall the exact date.

Q Was it before trial?

A I don't know. I don't recall. The events have been so quick that I cannot say if it was before or at the very beginning. My best recollection is that it was prior to trial.

Q All right. Don't you keep some kind of a record of the things that you do, for example a visit to the Department of Investigation or a visit to the --

A No.

Q But your best belief was it was before trail?

A I think it was just prior to trial, yes.

Q In any event when you got back to Ms. Strauss you told her that among other things you had been shown, as if you had not looked at the content, were work papers underlying the Goldstein report, is that right?

A That they had, yes.

Q All right.

MR. FRIEDMAN: Nothing further.

THE COURT: Anything else?

MS. STRAUSS: No.

THE COURT: All right.

MR. FRIEDMAN: I have one more thing, your Honor, that I would like to add to our list, if you will, that is the testimony given by Mr. Zander today where he said he had told Ms. Strauss about the Christmas understanding that he had or the assumption that he made with respect to that list.

THE COURT: He didn't say he told Ms. Strauss. He said he told Mr. Schwartz.

MR. FRIEDMAN: I am sorry, your Honor. I think your Honor is exactly right. I have yet to find that you are not right in terms of memory. It was Mr. Schwartz. I apologize. But that was what he did say and that is another piece of Brady material which goes back to Mr. Schwartz, that we are now able to see -- we were not able to see.

THE COURT: All right. I will see you Tuesday.

(Adjourned to Tuesday, September 6, 1977, at 10:00 a.m.)

TRANSCRIPT OF PROCEEDINGS DATED
SEPTEMBER 6, 1977

rsbr 709

United States of America

v.

75 Cr. 337

Irving Goldman

New York, New York

September 6, 1977
10:30 a.m.

(Trial resumed.)

- - -

(In open court; jury present.)

JACK ZANDER, resumed.

THE COURT: Good morning.

REDIRECT EXAMINATION (Continued)

BY MS. STRAUSS:

Q Mr. Zander, did you have a conversation with me in my office yesterday afternoon?

A Yes.

Q Who else was present at that time?

A Mr. Lippe.

Q As the result of that conversation do you have an admission that you want to make to this Court and to this jury?

A Yes.

Q What is that, Mr. Zander?

A I want to correct some previous testimony.

Q Some testimony that you gave at this trial?

A Yes.

Q In what specific areas do you want to correct your testimony, sir?

A The specific area was, I think on Friday.

Q Just the areas, what areas?

A The areas of my receiving cash from Mr. Goldman.

Q What other area?

A There was some omission in, in the Altman gift that I got.

Q Mr. Zander, starting with the Altman gift would you tell this jury the whole truth with respect to that matter?

A Yes.

Q All right.

A Mr. Altman first contacted I believe Mr. Jacobs about possibly him purchasing an operation called Glen Casino, an amusement park. Mr. Jacobs then turned the matter over to me for negotiation with Mr. Altman. Mr. Altman in the beginning said if we can close the deal, a good deal, I would like to take care of you. I told him that that wouldn't be necessary, that if the deal was a good one I would recommend it to Mr. Jacobs and that was the result of that particular conversation.

Q As the result of that conversation you walked away with the impression that you would possibly be receiving money.

MR. FRIEDMAN: Objection, your Honor, please.

THE COURT: No. Go ahead. Answer it.

A I walked away with the idea that there was a possibility because of the fact that I had said no, that wouldn't be necessary. I didn't know Mr. Altman at that time very well as to know what he would or wouldn't do.

Q In the course of negotiating that deal you had it in your mind that you may be receiving money as the result of it?

A There was a possibility of it.

Q Mr. Zander, in the course of your cross examination Mr. Friedman was asking you about moneys that you received in connection with your job. You talked about on the job training program moneys, you talked about what you called the garbage money that Mr. Goldman used to give you from time to time, and after you discussed those matters you were asked the following question, "Apart from that are there any other incidents where you received money or things of value apart from your salary, apart from the interest on savings accounts, apart from dividends on stock, that were related in some way or other of the business of Sportservice or any of the other companies?

You answered, "No. None that I can recall."

Mr. Friedman asked you, "Do you have any doubt?" and you answered, "No."

That is Page 315 of the transcript.

Mr. Zander, do you want to start from the beginning and tell the jury what the truthful answer was to that question?

A Well, that statement was incorrect. It was not a correct -- and I correct it.

(Continued on next page.)

Q Directing your attention to 1966, what happened in that year with respect to your receiving money in the course of your duties for Sportservice?

A When this company U. S. Candy Company was formed Mr. Goldman had told me that he had a 50 percent interest, and that he would take care of me.

Q When did that conversation take place?

A I believe it was, it would have been shortly after U. S. Candy was formed. I don't remember when U. S. Candy was formed. I think it was formed in 1966.

Q Where did the conversation take place?

A I don't recall whether it took place on the telephone or in New York.

Q Was anyone else present if it took place in New York?

A No.

Q Do you know where it took place in New York if it occurred there?

A It would have occurred wherever his offices were at that time. I don't remember if they were on Washington Street or 9th Street, I don't remember when he moved.

Q Referring to Mr. Goldman's offices, Mr. Zander?

A Yes.

Q Can you give us the conversation from the beginning as best you recall it, what did you say to him and what did he say to you?

A Mr. Goldman told me that he was forming this company with two other people who had experience in the candy business and that he was going to have 50 percent of it and the other two people would each have 25 percent of it. I can't recall if it was in that same conversation or in a subsequent conversation that he indicated that he would take care of me out of his share.

Q What did you say to him?

A I just said, okay.

Q Is there anything else about that conversation that you remember?

A No.

Q What did you then do as the result of that conversation?

A I told Mr. Lynch about this U. S. Candy Company being a supplier of certain type of odd lot candy and that I wanted him to purchase from this U. S. Candy Company.

Q What was the next conversation that occurred with Mr. Goldman on this topic, or the next meeting that you had with him?

A There was a meeting when we signed an agreement for the potato chips, that was part of U. S. Candy.

Q That occurred in late '66?

A Yes.

Q In the course of 1966 what if anything did you receive from Mr. Goldman on this deal?

A I don't remember exactly at what time but I believe it was sometime in late 1966, that I received an envelope with money in it.

Q Where were you when you received the envelope?

A In New York.

Q Who else was present?

A No one else.

Q Where in New York?

A I believe in his office.

Q What was in the envelope, Mr. Zander?

A There was cash in it. I don't recall exactly how much.

Q Approximately how much?

A It may have been in the neighborhood of a thousand dollars. I just don't remember, that's all.

Q That was in 1966?

A Yes.

Q Did you receive any other payments in '66 in connection with U. S. Candy?

A I don't recall any. I can't recall if, I don't recall any. I just recall receiving a payment.

Q Directing your attention to February 1, 1967, did you have a conversation with Mr. Goldman on that date?

A Yes. Mr. Goldman called me and told me he wanted to get rid of his other partners, he didn't like him, and he wanted all the candy business to revert from U. S. Candy to Jola with the exception of the potato chip business.

Q Did he say anything else to you at that time?

A Not at that time.

Q What did you say to him?

A I said okay. And I passed that information on to Mr. Lynch.

Q What was the next meeting or conversation that you had with Mr. Goldman on this topic?

A A couple of weeks later.

Q Where were you, sir?

A I went, I met Mr. Goldman in New York.

Q Where in New York?

A In his office.

Q Who else was present?

A No one else.

Q Who said what to whom?

A Mr. Goldman at that time said he would like, he would like some of our regular accounts in order to build up Jola profits by using the procedure of Mr. Lynch ordering merchandise from certain purveyors and having them charge the merchandise to Jola Candy Company, Jola Candy Company in turn billing Interborough News at an inflated price.

(Continued on the next page.)

Q Mr. Zander, what else, if anything, did Mr. Goldman say to you at that time?

A He again indicated that he would take care of me through Jola, similar to what he did with U. S. Candy, he would take care of me.

Q And what did you say to him, Mr. Zander?

A I said okay.

Q What was the next meeting or conference you had with Mr. Goldman about this matter?

A Well, at some point in 1967, I don't remember just when, it might have been the middle or -- I just don't remember when, he did -- I received money again from Mr. Goldman.

Q And where were you when you received that money?

A In New York.

Q Where in New York?

A In his office.

Q Who else was present?

A No one else.

Q And in what form did you receive that money?

A It was in an envelope, in cash.

Q This was in 1967?

A Yes.

Q How much?

A Roughly, I believe, a couple of thousand dollars.

Q And what did you do with that money?

A I took it back to Buffalo and put it in my safety deposit box.

Q And that was part of the money that was discovered by the tax people in 1968?

A Yes.

Q What was the next meeting or conversation that you had with Mr. Goldman in 1967 about this matter?

A In the fall of '67 -- well, each time Mr. Goldman gave me this money, he emphasized to me that it was-- that he had already paid taxes on it, and indicating that if he -- if it could be done in such a way where he wouldn't be paying taxes on it, that portion of the money could be larger. And I had suggested -- and I had indicated -- I had told him that I didn't know about that, that that would represent a hazard to me if something of that was on a record, if the cash payoff was fake and, you know, I would want to give that some thought. "But in the meantime I'll give you some more -- I'll increase your billing a little more."

And I gave instructions to give him additional accounts to be worked the same way as the original accounts.

Q What you are recalling now is a conversation you had in the course of 1967?

A In the fall of '67. I believe it was the early fall.

Q Do you remember a specific conversation with Mr. Goldman in the fall of '67 beyond what you have already told us?

A I don't think so. I don't recall.

Q Let's just see if we can get this straight. In the fall of 1967 you had a conversation with Mr. Goldman.

A Yes.

Q Where was that conversation?

A In New York.

Q And where in New York was it held?

A In his office.

MR. FRIEDMAN: I object as repetitive.

THE COURT: Yes, it is. But I'll permit it anyway.

A (Continuing) In his office.

Q Who else was present?

A No one else.

Q Who said what to whom in that conversation that you are recalling in the fall of '67?

A Mr. Goldman mentioned -- told me that with the high tax that he had to pay on the money, he had suggested that I participate in some way on the record with Jola, and I told him that I thought that would be a hazard to me to be on the record and that would be something, you know, I would want to think about.

Q Anything else you remember about that conversation?

A That's all I remember right at the time.

Q And during 1967, how many payments did you receive from Mr. Goldman in connection with this?

A I don't know if it was one or two payments, but I know -- I remember that in total it could have been a couple of thousand dollars.

Q How many thousand dollars, Mr. Zander?

A Two, approximately.

Q In 1967?

A Yes.

Q Now, how many times had you seen Mr. Goldman in 1967?

A Possibly four or five times.

Q And on how many of those occasions do you recall receiving cash from him?

A Possibly one or two. I don't recall. No. Excuse me. I'm not counting the times when he gave me garbage money. He did that -- he gave me what we call garbage money sometimes an average of maybe five or six times a year.

Q And how much did the garbage money amount to?

MR. FRIEDMAN: If your Honor please, I object.

THE COURT: You want an instruction?

MR. FRIEDMAN: Yes, I do.

THE COURT: All right.

Ladies and gentlemen, all of these so-called payments have nothing to do with this case except for one thing. The payments from Altman and the payments in cash and so on and so forth, whether sent through the mail, have nothing to do with the mail fraud counts charged here.

What it does have to do with is the veracity or lack of veracity -- that means truthfulness -- of the witness. That's all.

Go ahead.

MS. STRAUSS: Your Honor, may we approach the side bar?

THE COURT: No.

Q How much money was the garbage money, Mr. Zander?

A It would be generally anywhere from thirty, forty, fifty dollars.

Q And how many of those did you receive a year?

A Possibly maybe seven or eight, half a dozen, something in that area.

Q In what years, Mr. Zander?

A I don't remember when it started. I think it started -- I know it started at least in 1967 -- it may have started earlier; it may have started in '66 -- and it continued up until perhaps sometime in '73, when I gave instructions for it to stop.

Q We have reached the end of 1967. What was the first meeting or conversation you had with Mr. Goldman in 1968 about Jola and your participation in it?

A Well, Mr. Goldman --

Q When was the first meeting or conversation?

A About what?

Q About Jola and your participation in it, in the year 1968.

A I had a meeting in the fall, when he gave me the plan that he recommended for -- that he felt was safe and secure, and that was that my two children become stockholders.

Q Where did that conversation take place?

A In New York.

Q Who else was present?

A No one else.

Q Where in New York?

A In his office. At that time I know he was on Washington Street.

Q What did he say to you and what did you say to him?

MR. FRIEDMAN: If your Honor please, objection.

THE COURT: Yes, unless this is going to be different from direct or cross.

MR. FRIEDMAN: That's right.

THE COURT: I don't know, though. I'll let it go for now.

Q What did you say to him and what did he say to you on that occasion?

A Well, it was first mentioned that he wanted to talk to me on the telephone when he said he had an idea. Then, two or three weeks later, when I went to New York, he mentioned that specific idea, and then I told him I wanted to think about it. And then, about a month later, I came back and told him yes, to go ahead with that.

Q In the course of 1968, what, if any, payments did you receive from Mr. Goldman?

A I received a couple of payments. I know they --

Q How many, Mr. Zander?

A I would say two, outside of the garbage.

Q Two outside of the garbage money.

A Yes.

Q And where were you when you received the first of these two payments?

A In New York.

Q Where in New York?

A In his office.

Q In Mr. Goldman's office?

A Yes.

Q Who else was present?

A No one else.

Q And what did he give you on that occasion?

A An envelope.

Q And what was in the envelope?

A I think a couple -- about $2,000.

Q And with respect to the second payment, when did you receive that?

A Later that year. And it was --

Q Where were you on that occasion?

A In New York.

Q Where in New York?

A In his office. I remember there was one occasion, and I don't remember which one of the occasions, when he -- when we were walking together and he gave me an envelope while we were walking. The rest of them were always in his office.

Q And how much money was the second payment?

A About $2,000.

Q So in total how much cash did you receive from Mr. Goldman in 1968?

A About $4,000.

Q And where did you put this cash, Mr. Zander?

A I put -- I had a safety deposit box in New York. When I had that deposit box in New York, I put the money in that, in that box.

Q The safety deposit box connected with Robrian Corporation.

A Yes.

Q Now directing your attention to 1969, what, if any, payments did you receive from Mr. Goldman in that year that you have not previously revealed to this Court and this jury?

A Other than garbage money, I don't remember any payments. There was a time, and I don't know when it started, when I was receiving, like at the end of the year, a Christmas bonus -- Christmas money, it was called-- of maybe $1,000 or $1,200 or some such amount.

THE COURT: That is more than the smoked turkey that you told us about before, though, right?

THE WITNESS: Yes, your Honor.

Q Mr. Zander, what is your best recollection as to the first year in which you received this Christmas money?

A I don't -- I don't really know. It could have been -- there was a period of about three years -- it started -- it started about the time when he had requested that I send him copies of the payroll so he knew the people on the Interborough payroll. And I don't remember if that was in '69, '70 or -- it seems to me it would have been about '70, a year earlier or a year later.

Q So it was the first year that Mr. Goldman requested from you a list of employees at Interborough for Christmas gifts; is that what you are explaining?

A Yes.

Q And in that year you received a Christmas present from him.

A Yes.

Q And how much was the first Christmas present that you received from him?

A I don't recall the specific amount. I just can say -- can tell you that I thought it was about

$1,200, in the area of about $1,200.

Q And in what form did you receive that money?

A In cash.

Q Where did you receive it?

A In his office.

Q Who else was present?

A No one else.

Q And in the following year, 1970, what, if any, Christmas presents did you receive from Mr. Goldman then?

A If that is what the first -- I don't remember which was the first year, but in certain consecutive years I received something he called -- referred to as Christmas money. It was always about the same amount.

Q You think in 1970?

A The first one may have been in '70. I Just don't remember.

Q 1971?

A Yes.

Q For sure 1971?

A Yes, I would say so.

Q 1972?

A Yes.

Q 1973?

A Yes, I believe so.

Q How about 1974?

A No, I don't think so.

Q Now, with respect to all of this case that you have told us about, what, if any, report did you make to the Internal Revenue Service about having received it?

A I did not report that to the Internal Revenue Service.

Q Now, Mr. Zander, when is the first time that you told me about the additional information that you have now conveyed to this jury both as to the discussion you had with Mr. Altman before you negotiated that contract with him and as to all this cash that you received from Mr. Goldman?

A I volunteered that information to you yesterday.

Q For the first time, is that right?

A Yes.

Q And what did I tell you would be the consequence of your having failed to reveal that in your testimony before this Court and this jury?

MR. FRIEDMAN: If your Honor please, I object to this.

THE COURT: No.

Your objection is withdrawn?

MR. FRIEDMAN: My objection is withdrawn.

THE COURT: Okay. Fine.

All right. Answer it.

A I would have to first --

THE COURT: No. Answer the question.

A (Continuing) After I had got all done, you indicated that I could possibly be indicted.

THE COURT: For perjury, right?

THE WITNESS: For perjury.

Q Mr. Zander, did I say that before you got all done or after you got all done?

A Pardon?

Q Did I tell you that before you gave me all the details?

A No. After. In other words, before -- before I gave you any of the details, you -- you told me -- you said, "Now, this is your last chance to make -- to clean the record up of any previous testimony that may have been incorrect."

And it was at that point that I then wanted to correct the record and give you the correct testimony.

MS. STRAUSS: Your Honor, I would like to ask him some leading questions that may be inconsistent with what he just said.

THE COURT: Come to the side bar.

2b am

(In the robing room.)

THE COURT: See 377 Fed. Supp. 1, the first line. Do you know what the first line is? "John Spurtis is a liar," period, paragraph.

Now, so far you have been completely honest about this thing. Do you want to treat him as a hostile witness?

MS. STRAUSS: The testimony he just gave, Judge, does not reflect precisely how it was. I have a memo of the conversation yesterday and he admitted first that he had taken some cash. Initially he admitted $1500 that had been taken from Goldman.

I then informed him that he would be indicted for perjury as a result of having lied about that during cross examination in this case, and we had some further discussion about his being indicted. And only after I made it perfectly clear to him that he would be indicted as a result of having lied he told me all the details that he is now relating from the stand.

Now, he has just said that he only related those details before he was informed that he would be indicted for perjury, and I would like to just bring that out before the jury, exactly how he did it.

MR. FRIEDMAN: If your Honor please, my

experience doesn't encompass these things. I tell you that. But I can't believe what we are saying. We are supposed to sit here while they have a duo, the witness who is a confessed perjurer. And it isn't just his testimony at this trial; he has perjury locked up that is two years old and more. And now we are going to have --

THE COURT: That may be. I am not saying it is not.

MR. FRIEDMAN: I am not suggesting that your Honor is suggesting otherwise. And now we are going to have a singles match between Miss Strauss and the witness while they try to rehabilitate this prostitute. And I think that is ridiculous.

THE COURT: You are referring only to the witness.

MR. FRIEDMAN: I am, sir.

I think, Judge, that this case has to be thrown out. This man is a confessed perjurer. He has perjured himself all over his direct testimony. I can't even get all the ramifications of it. But it touches virtually every aspect into which he went on his direct examination. And now we are told he is going to be rehabilitated. And even now he hasn't flushed his system clean, because he can't tell the story that he told yesterday. I don't think we should suffer for this. This is the government's witness. This is the witness that they've seen so many times, they don't even know how to keep count of it.

THE COURT: They are not vouching for him. All right. You can treat him as a hostile witness.

MR. FRIEDMAN: Your Honor, I have this latest edition of something.

THE COURT: Don't worry about it. You will get a break to read it.

MR. FRIEDMAN: Before the resumption or after the resumption? I don't know what she is going to do.

THE COURT: I don't either.

MR. FRIEDMAN: She announced that she is going to try to get him to adhere to whatever is in this batch of papers.

THE COURT: She announced that what she is going to do is say that the story he told today is not what happened yesterday.

MR. FRIEDMAN: I would like to catch up with what happened yesterday, because nobody invited me, Judge.

THE COURT: I wasn't invited either. I wish I had been.

(In open court.)

THE COURT: All right. Go ahead.

BY MS. STRAUSS:

Q Mr. Zander, yesterday you had a meeting with me in my office, is that right?

A Yes.

Q Mr. Lippe was present at that time.

A Yes.

Q And we discussed a series of questions that developed as the result of your cross examination in this case.

A Yes.

Q And I asked you in the course of those questions why it was that you had not paid Irving Goldman in the normal course of things if in fact he was just rendering services as a public relations man. Do you remember my going over that with you?

A I believe so.

Q Do you recall that you told me that you believed you would be reprimanded --

THE COURT: Wait a second.

The answer is yes or no. Do you remember it?

THE WITNESS: Yes.

THE COURT: All right. That was yesterday,

right?

THE WITNESS: Yes.

THE COURT: Okay.

Q And, Mr. Zander, do you remember discussing the fact that you could have been reprimanded by your superiors at Sportservice for allowing Mr. Goldman to inflate the invoices of Interborough as you permitted him to do in early 1967?

MR. FRIEDMAN: If your Honor please, I object.

THE COURT: No. You can answer.

Q Do you remember saying that you thought you would be reprimanded but not fired for doing so?

A Yes.

Q And I asked you whether you received any cash at that time.

A At what time?

Q At the time you allowed Mr. Goldman to do this.

Do you remember my questioning you: Had you received any cash?

A Yes. Yes, you asked me.

Q And do you remember that you --

THE COURT: Do you have any doubt about it?

THE WITNESS: No, I have no doubt about it. I am trying to -- the course of events that took place --

THE COURT: This was yesterday, right?

THE WITNESS: Yes. The course of events yesterday that took place.

THE COURT: All right.

THE WITNESS: If I may be allowed to say some --

Q We are getting to it, Mr. Zander.

THE COURT: No. Go ahead. Ask the question.

Q Do you remember my asking you whether you had received any cash from Mr. Goldman at the point when you began to allow him to do this?

A Yes.

Q And you hesitated in answering, did you not?

MR. FRIEDMAN: If your Honor please, I object.

THE COURT: No. I will permit it. He did so today again. The jury can see it.

A Yes.

Q And at that point, Mr. Zander, I told you that you had better tell the whole truth, that you had an obligation to tell the truth, and I reminded you that I had repeatedly asked you to tell the truth in this case; do you remember that?

A Yes. But you are omitting something.

Q Well, go on.

A You told me this is my last opportunity to be able to correct any statements that were incorrect that I had made in the past.

Q And did I also tell you that we couldn't make any promises to you but that, if you had anything to say about your testimony, this was the time to say it?

A Yes, you said that. I can't -- I'm trying to recall if you said that before I started telling you or after. I'm just not sure. But I remember you saying that.

Q Do you remember saying to me then "What if Mr. Goldman says I received cash?"?

A Yes.

Q And do you remember my telling you that you shouldn't count on the fact that it would be one on one, your word against his?

A Well -- yes, you made that comment.

Q And do you remember at that point you told me that you had received $1500 or so of cash from him? Do you remember that?

A $1500?

Q $1500, Mr. Zander. Do you remember saying that at that time?

A I received various sums. I don't remember --

I don't know which incident you are referring to.

Q What did you tell me initially? How much cash did you --

A Oh, the initial thing I ever received was through U.S. Candy.

Q Mr. Zander, when I said to you that you should not count on it being one on one, your word against Mr. Goldman's word, and I asked you did you receive any cash from Mr. Goldman, and you said to me that you did, do you recall you told me at that point --

A Yes.

MR. FRIEDMAN: If your Honor please, may I approach the side bar?

THE COURT: Sure.

Ladies and gentlemen, time for a break.

(The jury left the courtroom.)

(In the robing room.)

MR. FRIEDMAN: If your Honor please, one question came in and I didn't rise to object to it. The second one has just come now.

What Ms. Strauss is doing as part of the sanitation process, whether she intends it or not, is to force a mistrial. What is happening is she is talking about one on one, that is to say Zander against Goldman, when she knows very well that there is a question about whether Goldman will take the stand or --

THE COURT: Listen, I was there. I watched it. I heard it. I was surprised you didn't object.

MR. FRIEDMAN: I have done it now, Judge. I have done it now, Judge. I have done it now. It has been repeated for the second time. It is an outrage to have that laid before the jury that way.

MS. STRAUSS: Judge, what I was --

MR. FRIEDMAN: This is being done deliberately. These are not accidental questions.

THE COURT: No. It was said yesterday. She is not intending or looking for a mistrial in this case. There is no question of that at all. But the effect is such that there is a question in my mind as to whether the prosecutor at this point, even though inadvertently, is calling upon the defendant to take the stand.

MS. STRAUSS: Your Honor, it is exactly the opposite implication.

THE COURT: I know what you are intending and I'm not saying it is personal in any way. I know it is not intentional. There it is. It is "one on one." If "one on one" gets repeated enough times, the jury is going to say that means that the defendant is going to take the stand.

MS. STRAUSS: Judge, what I was saying to Mr. Zander yesterday was that if Mr. Goldman were to be convicted in this case, he could come forward and give evidence against Mr. Zander, and in that respect it would be one on one, having nothing to do with testimony in this case.

I think it is perfectly clear. I don't think the implication to the jury would be that Mr. Goldman would take the stand in this case and suggest that he, Mr. Goldman, gave cash to Zander. That would be self-inculpatory. And I don't think that there is any implication here that --

THE COURT: Self-inculpatory of what?

MS. STRAUSS: That he is guilty of this crime, that he gave cash to Zander.

THE COURT: Of what crime? It is not a crime that is cognizable under federal law. That he gave cash from hand to hand?

MS. STRAUSS: Yes, that he gave cash in connection with obtaining a fraudulent deal from Zander.

There is absolutely no difference, Judge. I wanted to argue this point before, as to the relevance of this evidence. There is no difference between the early part of the scheme, where it now appears that cash was being paid to Zander, and the later part, where the money is going through his children by way of check. It is precisely the same thing. It is a fraud visited on Sportservice-Interborough News because --

THE COURT: Except that Interborough News-Sportservice was located in the State of New York. There is nothing in the state involved at all.

You may have a crime which is cognizable under state law.

MS. STRAUSS: It is precisely the fraud charge in the indictment. It is the 1341 mail fraud charge that Zander gave to Goldman the right to inflate the invoices of Interborough News as a result of being essentially corrupted by Goldman in the course of deciding to do so, and the fact that he was inflating the invoices was hidden from Sportservice and hidden from the owners of the company, and the only difference between the cash payments and the later payments by check is that one there is a record of and one there is no record of. But there is simply no difference between the later part of the scheme and the early part of the scheme. It is just a question of the form of the payment. And the suggestion that Mr. Goldman would take the stand and admit that any one on one here is a mistrial I think is really far fetched because I think it would be not in the jury's mind that Mr. Goldman would be about to take the stand and say "I gave cash to Jack Zander."

THE COURT: What you are doing still, though, is saying one on one in front of the jury and the jury is cognizant of the fact that one on one means we are going to hear from one side and we are going to hear from the other side. And that still is calling for Goldman to take the stand.

MS. STRAUSS: Your Honor, if defense counsel would seek some instruction to the jury, I don't think --

THE COURT: I am not sure that we can even instruct around it.

MS. STRAUSS: I don't think that that implication was there. I think what I said to Mr. Zander, and perhaps I could correct it by bringing this out, is that in the event Mr. Goldman were to be convicted in this case that he could come and give evidence against Mr. Zander. That is really --

THE COURT: That adds to, compounds the confusion.

MR. FRIEDMAN: That is seven times fold.

THE COURT: It is damn close to the line. And it is not intentional.

MR. FRIEDMAN: It doesn't have to be malicious to be prejudicial.

THE COURT: I didn't say it had to be malicious.

(Continued on next page.)

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(Recess.)

(In the robing room.)

MR. FRIEDMAN: Judge, during the recess I have told Mr. Goldman about what has happened in the robing room just before the recess. Your Honor held at one time that he was fit to stay in trial and I assume your Honor meant one trial. I don't know if your Honor had in mind that he would face the prospect if a mistrial be granted of standing two trials. In my own judgment, and it is only my judgment, anybody that would do with this indictment anything further, if it was a mistrial, that is their business, Judge.

But in any event, what I have to say to your Honor is this: We are at this impasse because of the misconduct, to say the least of a government key witness, of the government's key witness, the man who has served as the government key witness on several indictments against this defendant. And we have a record in this case, as I think your Honor will at least concede, that has led your Honor to reserve decision on motions to dismiss for a variety of matters having to do with other conduct of the government. All I can exhort your Honor to do is this, that I think that this case deserves a burial, I think there are grounds in this record that mandate

2 rsbr 746

it and have mandated it already long since. I would respectfully ask your Honor to consider those grounds and to dismiss the indictment on the basis of those factors.

THE COURT: Good try, but, no. I can't. Look, I am sympathetic towards the man, all right. A mistrial, yes, dismissal there is insufficient here, if we went through the entire thing. I have been known to charge the jury in the following words; ladies and gentlemen, twelve reasonable people could not find this man guilty beyond a reasonable doubt, therefore I am going to save you the trouble of deliberation. And I then entered a verdict of acquittal. That's possible, I might do it in this case too. But I have not seen it. The motion for a dismissal of the indictment therefore cannot be granted at this point. All right.

MR. FRIEDMAN: Your Honor makes the rulings, I make the applications and I gave the reasons that I see fit.

THE COURT: We all do what we are supposed to do.

MR. FRIEDMAN: Absolutely, therefore your Honor decides. All I want your Honor to understand is that heretofore before today I have urged your Honor as conscientiously as I could --

3 rsbr 747

THE COURT: You have been a thorough professional.

MR. FRIEDMAN: What I mean to say is this, the things that developed --

THE COURT: It is true.

MR. FRIEDMAN: Thank you, Judge. The things that developed here day by day have been things about which we knew nothing. As they unfolded they seemed to us that they mandated relief. Your Honor has reserved, day by day as things have come on your Honor has continued to reserve on those matters.

THE COURT: I am a very patient man.

MR. FRIEDMAN: I know, Judge. You are patient. I understand that.

THE COURT: This last one blew it. That's all I can say.

(In open court.)

THE COURT: I am sure, ladies and gentlemen, that you are somewhat surprised to see, but I do own a suit jacket.

BY MS. STRAUSS:

Q Mr. Zander --

THE COURT: There is an outstanding motion, a motion for a mistrial. The motion is granted.

4rsbr 748

Ladies and gentlemen, thank you for your attendance. You have been really super and I appreciate it very much. You are released now.

Mr. Clerk, would you dismiss the jury.

MR. FRIEDMAN: If your Honor please, May I, after the jury leaves, address the Court?

THE COURT: Sure.

MS. STRAUSS: Your Honor, may we, before the jury leaves, have argument on this.

THE COURT: What was that?

MS. STRAUSS: Argument on this motion. I didn't understand that your Honor was going to do this.

THE COURT: I just did it. It is done.

MS. STRAUSS: May we have a conference?

THE COURT: Sure.

All right, wait in the jury room.

(In the robing room.)

MS. STRAUSS: Perhaps my hearing wasn't very good. I thought that your Honor said the motion--

THE COURT: For dismissal of the indictment was denied. The motion for mistrial is granted.

MS. STRAUSS: With respect to the mistrial, your Honor, I would ask your Honor to reconsider. The comment --

5 rsbr 749

THE COURT: Go ahead.

MS. STRAUSS: I am sorry.

The comment, I assume that if your Honor is basing it on the comment that it would be one on one as between the witness and between Mr. Goldman.

(Continued on next page.)

THE COURT: Go ahead.

MS. STRAUSS: As a matter of the reasonable inference to be drawn from that I don't think it could be reasonably suggested from that that it has anything to do with the defendant taking the stand in this case. It has no logical sense that Mr. Goldman would in this case confront Mr. Zander with the accusation that he, Mr. Goldman, gave Mr. Zander money for Mr. Goldman. To do that would be essentially the sinking of his own ship. I think therefore it was the only possible meaning of saying to Mr. Zander, don't count on the fact that it is one on one.

Mr. Goldman would get up at some point in time and say to Zander -- was given money. I don't think that it makes any sense for anyone to think that that would be something he would do in this trial.

Therefore, I don't think it is in any way possible for the jury to have thought that that called upon this defendant to take the stand in this case.

THE COURT: The first time I heard it I thought that it called for the defendant to take the stand. I noted that the defense counsel stood up but didn't object but started to stand up. The second time I heard it right and there is no way that the prosecution can call for the defendant to take the stand and that's exactly what happened here. Under the circumstances there is no way of getting under it. I could charge the jury from here to Sunday about not taking any inference because the man didn't take the stand. But Lord knows and I am not sure that he is in a position to take a stand. At one point I pointed out to defense counsel that he has three responsibilities here, one is as an attorney he has a responsibility to the Court and two as an attorney he has a responsibility to a client and three as a human being he has a responsibility to the man. Am I correct?

MR. FRIEDMAN: That is correct, Judge.

THE COURT: If I were in his shoes the last thing I would do is take that man and put him on the stand. I don't know if I would be able to restrain him. The fact of the matter is that we now have the prosecution coming out and saying basically, it is going to be one on one, your testimony as opposed to the testimony of the defendant.

Now, I have already stated and I will state again, I don't believe it was done maliciously. But malicious or not, we have had it I think about three times from the jury that it is one on one.

MS. STRAUSS: It is twice, your Honor. I had the reporter read it back to me.

THE COURT: Twice. Once is enough.

MS. STRAUSS: Your Honor, if there had been an objection the first time it wouldn't have happened a second.

THE COURT: That might be. Once is bad enough.

MS. STRAUSS: I would just ask if your Honor would reconsider on the basis of the fact that as a matter of logic the government would not be expecting or calling on Mr. Goldman to take the stand and incriminate himself which is what the only implication of that statement of Mr. Zander's could possibly be. I think it was clear from that that the suggestion from Mr. Zander was that that would be something that might happen on some other occasion, that Mr. Goldman would accuse him of having lied in the trial. That is not something that would have happened in the context of this case. The defense's position has to be that Mr. Zander --

THE COURT: I understand what you are driving at. I also understand that sitting like I was, as a complete observer I really didn't know what was coming on at all. I got the impression that the government was calling upon Goldman to take the stand. I went upstairs and I asked my two law clerks what their impression was and they agreed without prompting by me. Under the circumstances I cannot see how you can get around it. It is there, it is out there, it is hanging now.

MS. STRAUSS: Your Honor --

THE COURT: Under the circumstances I can do nothing else but declare a mistrial.

MS. STRAUSS: Your Honor, perhaps it would be possible to fashion an instruction that was extremely favorable to the defense in, to the effect that that comment, of course you know first, of course, that the defendant doesn't have to do anything and there is a presumption of innocence.

THE COURT: All right. I ran through all those, all right.

MS. STRAUSS: Of course, your Honor. Beyond that, that no one would expect in this trial that Mr. Goldman would be in a position to make a statement as was referred to in that conference yesterday or should make a statement to that effect and that it was improper for the government to even use the terminology in front of the jury and that essentially it is something that should be ignored and in no way held against the defense. Your Honor, given the fact that the logic of it is so tangential, namely that it is so improbable that the government would be calling upon Mr. Goldman to get up, and not ordinarily.

THE COURT: You and I know that because we are trained in the law. We are talking about for example who were sitting there who are not trained in the law. And they take it in one way, not the way that you are talking about at all. They take it and must take it as a calling upon the defendant to take the stand and that's the only way they cane take it. I played both sides of the fence, I was a prosecutor for a long time, I was defense counsel for a while, too. I sit there and I can't figure anything else. I am sorry. It is unfortunate, we have gone through a lengthy jury selection process, we have gone through a trial that has perhaps lasted too long, maybe. There you are. I can't do anything else. I'm sorry. I knew you would disagree with me but there it is.

MS. STRAUSS: I would ask that your Honor reserve decision and give us an opportunity to bring to your Honor whatever alternatives there might be and whatever might possibly, possibly change your Honor's mind. Of course if we --

THE COURT: Do you realize what I am doing?

I am consigning myself to the 7th circle. I will have to go through this again.

MS. STRAUSS: I am suggesting, your Honor, that it may not be necessary. It may be remediable under the circumstances. I think that there have been certainly many things in many cases far more egregious than this that have been remedied by instructions. Again, I can only emphasize that by a matter of logic, it couldn't make sense the government would be calling on Mr. Goldman to say I gave you cash. It is not a logical thing that Mr. Goldman would be called upon by the government to be getting up and -- it is one thing if the government says that -- the defendant will have to come in and explain this away. But to get up --

THE COURT: It is there. There is no way that I can see of correcting it. I'm sorry, but that is the way it has to be.

MS. STRAUSS: In that case I would ask your Honor whether we are going to begin immediately again or what.

THE COURT: I will set a trial date but I will not do it right now.

MS. STRAUSS: Very well your Honor.

MR. FRIEDMAN: Thank you, your Honor.

(Time noted 11:40 a.m.)

NOTICE OF MOTION DATED SEPTEMBER 28, 1977 FOR ORDER DISMISSING INDICTMENT (pp. 729a-730a)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---X

UNITED STATES OF AMERICA,

75 Cr. 337 (KTD)

-against-

NOTICE OF MOTION

IRVING GOLDMAN,

Defendant.

---X

SIRS:

PLEASE TAKE NOTICE that upon the Transcript of the trial herein, and upon all of the prior proceedings heretofore had herein, the undersigned will move this Court, at Room 619 of the United States Courthouse, Foley Square, New York, New York, on the 11th day of October, 1977, at 2:00 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rules 12(b) and 48(b) of the Federal Rules of Criminal Procedure dismissing the Indictment on the grounds of (1) violation of the Double Jeopardy clause of the Fifth Amendment to the Constitution of the United States, and, in the alternative, (2) violation of defendant's right to a speedy trial, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: New York, New York
September 28, 1977

Yours etc.,

FRIEDMAN & GASS, P.C.

By
A Member of the Firm
Office & P.O. Address
99 Park Avenue
New York, New York 10016
Tel. No. 212-682-7474

-and-

MILLARD, GREEN & UDELL
450 Park Avenue
New York, New York 10022

Attorneys for Defendant

TO: ROBERT B. FISKE, JR., ESQ.
United States Attorney
One St. Andrews Plaza
New York, New York 10007

OPINION AND ORDER OF HON. KEVIN THOMAS DUFFY ON MOTION TO DISMISS INDICTMENT (Dated October 28, 1977)

(pp. 731a-742a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--------------------------------x

UNITED STATES OF AMERICA	:	OPINION AND ORDER
-against-	:	75 Cr. 337
IRVING GOLDMAN,	:	
Defendant.	:	

--------------------------------x

APPEARANCES:

HONORABLE ROBERT B. FISKE, JR.
United States Attorney, S.D.N.Y.
Attorney for the Government
By: Audrey Strauss, Esq.
Daniel T. Beller, Esq.
Asst. United States Attorneys
Of Counsel

FRIEDMAN & GASS, P.C.
By: Arthur S. Friedman, Esq.
Peter N. Wang, Esq.
Of Counsel

MILLARD, GREENE & UDELL, ESQS.

Attorneys for Defendant

KEVIN THOMAS DUFFY, D.J.

On August 23, 1977, the trial of defendant Irving Goldman on charges of conspiracy and mail fraud commenced. The trial was aborted on September 6, 1977, when I declared a mistrial during the redirect examination of the government's chief witness. Pending retrial, defendant has moved to dismiss the indictment on the grounds that retrial would place him in double jeopardy in violation of his rights under the Fifth Amendment to the Constitution and would deprive him of his rights to a speedy trial under the Speedy Trial Act of 1974, 18 U.S.C. §3161 et seq.

The Fifth Amendment's prohibition against placing a defendant in double jeopardy does not bar the retrial of a defendant who has requested or consented to a mistrial for prosecutorial or judicial error, so long as the error was not the product of intentional provocation or bad faith. Lee v. United States, __ U.S. __, __, 45 U.S.L.W. 4661, 4663-64 (June 13, 1977); United States v. Dinitz, 424 U.S. 600 (1976); United States v. Jorn, 400 U.S. 470, 485 (1971). Consent need not be express; rather, it may be implied from a totality of the circumstances. United States v. Goldstein, 479 F.2d 1061 (2d Cir.), cert. denied, 414 U.S. 873 (1973).

A different situation is presented, however, when a mistrial is declared by the court sua sponte, in the absence of a request or consent by the defendant. In such a case, the double jeopardy clause precludes retrial unless the court makes explicit findings that no reasonable alternative curative measures exist. United States v. Grasso, 552 F.2d 46 (2d Cir. 1977), cert. pending, 45 U.S.L.W. 3781 (May 31, 1977).

Recognizing that double jeopardy claims "turn on the particular facts . . ." Illinois v. Somerville, 410 U.S. 458, 464 (1973), defendant has attempted to shape the facts precipitating the mistrial declaration in this case to fit into those legally recognized precepts which would bar his retrial. Thus, he argues that the mistrial was deliberately provoked and forced upon him by the government and declared by this Court sua sponte without his request or consent and in the absence of findings. The record, however, belies his view both as to the precipitating cause of the mistrial and his lack of involvement in its declaration.

The events leading to the mistrial declaration began with certain questioning on redirect examination by the government of Jack Zander, its chief witness and an alleged co-conspirator. The government elicited from Zander that he had admitted to the prosecutor the previous afternoon that he had not been truthful with respect to certain areas of his testimony on cross-examination. Zander then testified to his receipt of certain cash payments from defendant. The prosecutor then began to question Zander about the substance of their prior discussion. To demonstrate that Zander's testimony regarding the sequence of statements made during that discussion was inconsistent with the prosecutor's notes of the meeting, the government requested that he be treated as a hostile witness. This request was granted.

During the course of the questioning that ensued, the following exchange took place between the prosecutor and Zander:

> Q. Do you remember saying to me then "What if Mr. Goldman says I received cash?"?
>
> A. Yes.
>
> Q. And do you remember my telling you that you shouldn't count on the fact that it would be one on one, your word against his?
>
> A. Well -- yes, you made that comment.
>
> Q. And do you remember at that point you told me that you had received $1500 or so of cash from him? Do you remember that?
>
> A. $1500?
>
> Q. $1500, Mr. Zander. Do you remember saying that at that time?
>
> A. I received various sums. I don't remember -- I don't know which incident you are referring to.
>
> Q. What did you tell me initially? How much cash did you --
>
> A. Oh, the initial thing I ever received was through U.S. Candy.

Q. Mr. Zander, when I said to you that you should not count on it being one on one, your word against Mr. Goldman's word, and I asked you did you receive any cash from Mr. Goldman, and you said to me that you did, do you recall you told me at that point --

A. Yes.

(Transcript 737-38.)

At this point, defense counsel requested a side bar conference. A recess was taken and a conference was held in the robing room. The following transpired:

> MR. FRIEDMAN: If your Honor please, one question came in and I didn't rise to object to it. The second one has just come now.
>
> What Ms. Strauss is doing as part of the sanitation process, whether she intends it or not, is to force a mistrial. What is happening is she is talking about one on one, that is to say Zander against Goldman, when she knows very well that there is a question about whether Goldman will take the stand or --
>
> THE COURT: Listen, I was there. I watched it. I heard it. I was surprised you didn't object.
>
> MR. FRIEDMAN: I have done it now, Judge. I have done it now. It has been repeated for the second time. It is an outrage to have that laid before the jury that way.
>
> MS. STRAUSS: Judge, what I was --
>
> MR. FRIEDMAN: This is being done deliberately. These are not accidental questions.

> THE COURT: No. It was said yesterday. She is not intending or looking for a mistrial in this case. There is no question of that at all. But the effect is such that there is a question in my mind as to whether the prosecutor at this point, even though inadvertently, is calling upon the defendant to take the stand.
>
> MS. STRAUSS: Your Honor, it is exactly the opposite implication.
>
> THE COURT: I know what you are intending and I'm not saying it is personal in any way. I know it is not intentional. There it is. It is "one on one." If "one on one" gets repeated enough times, the jury is going to say that means that the defendant is going to take the stand.

(Transcript 739-40).

The prosecutor then argued her position that the phrase "one on one" in the context of the testimony implied not that defendant would take the stand and refute the payment to Zander but that defendant might come forward at a later date and testify against Zander. At her suggestion that this latter implication be brought to the jury's attention, I noted that such would tend to "compoun[d] the confusion," and defense counsel stated, "That is seven times fold." (Transcript 742). As the conference drew to a close, I restated my belief in the unintentional nature of the prosecutor's question, to which defense counsel replied, "It doesn't have to be malicious to be prejudicial." (Transcript 743).

After recessing, a second robing room conference was held. At that time, defense counsel noted that I had reserved decision on his various motions to dismiss the indictment on other grounds relating to prosecutorial conduct and he urged dismissal adding misconduct of the witness as a ground. Prior to moving for dismissal, he mentioned that he had conferred with defendant during the recess. Referring to my prior decision after a pretrial medical hearing that defendant was fit to stand trial, he stated:

> I don't know if your Honor had in mind that [Goldman] would face the prospect if a mistrial be granted of standing two trials. In my own judgment, and it is only my judgment, anybody that would do with this indictment anything further, if it was a mistrial, that is their business, Judge.

The motion to dismiss the indictment was denied. In so denying it, I stated, "A mistrial, yes, dismissal there is insufficient here if we went through the entire thing . . . ."(Transcript, 746). Defense counsel replied, "Your Honor makes the rulings, I make the applications and I gave the reason that I see fit." (Transcript 746). Referring again to matters on which I had reserved decision, defense counsel remarked about my patience. I commented, "This last one blew it. That's all I can say." (Transcript 747). Defense counsel did not reply.

At this juncture, I reassumed the bench and stated, "There is an outstanding motion, a motion for a mistrial.

That motion is granted." (Transcript 747). Prior to dismissing the jury, I heard reargument on the issue in the robing room. Upon entering the robing room, in response to the prosecutor's comment, I repeated that the motion "[f]or dismissal of the indictment was denied." (Transcript 748). The prosecutor proceeded to argue that in the government's view, the "one on one" questions did not, in context, call on the defendant to take the stand, and that an instruction favorable to defendant might dispel an adverse inference. Having reviewed this possibility and rejected it, I stated that "There is no way that I can see of correcting it." (Transcript 755). Apart from thanking the Court (Transcript 755), defense counsel was silent through this conference.

Because defendant's position puts in issue his "valued right to have his trial completed by a particular tribunal," Wade v. Hunter, 336 U.S. 684, 689 (1949), I have engaged in this lengthy recitation of the record in order to afford his double jeopardy claim complete consideration. However, the record clearly establishes what I continue to perceive as a defense motion for a mistrial; at the very least, it demonstrates defense consent thereto.

The first robing room conference was at the defense counsel's request. It was at that time that counsel raised the issue of a mistrial and strenuously objected to the prosecutor implicitly calling on Goldman to take the stand. That counsel understood himself to have moved for a mistrial is reflected in his comments at that time and in his statement at the outset of the second conference that defendant would face a second trial "if a mistrial be granted." (emphasis added). When his motion to dismiss was denied, he emphasized that it was his job to make the various applications, giving his reasons therefor. That I understood that the defense had moved for a mistrial is apparent from my references to the same both to the parties in conference and to the jury in open court.

Even if the record were construed as failing to support my continued perception of an express motion, clearly it evidences defense counsel's consent to a mistrial. Counsel urged the necessity of a mistrial and objected to the prosecutor's suggestion of a curative instruction. He acknowledged that the granting of a mistrial would necessitate defendant's facing a second trial. He was present when I announced that I was granting an outstanding mistrial motion and failed to disabuse me of that view although he had ample opportunity to do so. Indeed, he sat silent while the prosecutor argued against mistrial, and after I rejected that argument, thanked the Court.

While a failure to object to a mistrial may not, in and of itself, constitute consent, see United States v. Grasso, supra, at 50, it is a factor to be considered. United States v. Goldstein, supra, at 1067-68 n. 11. The totality of the circumstances attendant on the declaration of mistrial in this case points to only one reasonable conclusion -- that defendant consented to, if not expressly requested, the mistrial.

Defendant's claim of prosecutional overreaching barring retrial is likewise unsupported by the record. The prosecutor repeatedly emphasized her belief that the jury would not logically infer that the government was calling on defendant to take the stand. Indeed, defense counsel stated initially that the prosecutor was forcing a mistrial "whether she intends it or not" and subsequently, that her questioning of Zander did not "have to be malicious to be prejudicial." Yet without intentional provocation or bad faith, prosecutional error, even if prejudicial, resulting in a mistrial is insufficient to bar retrial on double jeopardy grounds. United States v. Jorn, supra. The record is replete with my findings that the error committed here was unintentional. Thus, defendant's double jeopardy claim must fail.

Defendant's claim that retrial would violate his speedy trial rights is palpably without merit. On August 16, 1977, I rejected defendant's claim that he was denied his speedy trial rights under the Sixth Amendment to the Constitution, the Speedy Trial Act, 18 U.S.C. §3161 et seq., the Southern District Plan for Achieving Prompt Disposition of Criminal Cases and the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases. At that time I determined that the trial would commence within the 180 day requirement of the Speedy Trial Act and the local rules. Defendant now contends that since the speedy trial clock resumed running on September 6, 1977, the date of the mistrial, retrial would commence outside the remainder of the original 180-day period in violation of his rights.

The Speedy Trial Act and presently operating implementing Southern District Plan for Achieving Prompt Disposition of Criminal Cases expressly provide that in the event of a mistrial, "trial shall commence within sixty days . . ." 18 U.S.C. §3161(e); Rule 5(b) of the Statement of Time Limits and Procedures for Achieving Prompt Disposition of Criminal Cases (the Statement). Moreover, in computing the sixty-day period for retrials, "delay reasonably attributable to any period not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement," is excluded. 18 U.S.C.

§3161(h)(1)(G); Rule 10(a) of the Statement. See United States v. Bubar, Dkt. No. 76-1140, slip op. 4519, 4550, (2d Cir. June 30, 1977). According to the Act and local rules, then, the sixty day period, assuming no exclusionary time within which defendant would have to be retried, would end on November 5, 1977. However, the period of time representing the pendency of the instant motion is excluded from that calculation. There has thus been no present violation of defendant's rights in this respect.

Defendant's motion to dismiss the indictment is denied.

SO ORDERED.

Kevin Thomas Duffy
U. S. D. J.

Dated: New York, New York
October 28, 1977

ORDER OF HON. KEVIN THOMAS DUFFY DATED OCTOBER 28, 1977 STAYING TRIAL (Filed October 31, 1977)

FILED
OCT 31 1977
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------x

UNITED STATES OF AMERICA	:	
-against-	:	ORDER
IRVING GOLDMAN,	:	75 Cr. 337
Defendant.	:	

---------------------------------x

KEVIN THOMAS DUFFY, D.J.

The trial of this prosecution, scheduled to commence on October 31, 1977, shall be stayed pending defendant's appeal from my Opinion and Order of October 28, 1977, denying his motion to dismiss the indictment on double jeopardy grounds.

SO ORDERED.

Kevin Thomas Duffy

Dated: New York, New York
October 28, 1977

MICROFILM
OCT 3

NOTICE OF APPEAL (FILED NOVEMBER 3, 1977)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

UNITED STATES OF AMERICA

-against-

IRVING GOLDMAN,

Defendant.

---X

NOTICE OF APPEAL

75 Cr. 337 (KTD)

Notice is hereby given that Irving Goldman, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order denying defendant's motion to dismiss the Indictment for violation of the "double jeopardy" clause of the Constitution of the United States, and for violation of defendant's right to a speedy trial, entered in this action on the 28th day of October, 1977.

Dated: New York, New York
November 3, 1977

FRIEDMAN & GASS, P.C.
By
A Member of the Firm
Attorneys for Defendant
Office & P.O. Address
99 Park Avenue
New York, New York 10016
Tel. No. 212-682-7474

TO: CLERK OF THE COURT
United States Courthouse
Foley Square
New York, New York 10007

ROBERT FISKE, ESQ.
UNITED STATES ATTORNEY
One St. Andrew's Plaza
New York, New York 10007

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- *against* -

IRVING GOLDMAN
Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF *ss.:*

I, Reuben A. Shearer, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 211 West 144th Street, New York, New York 10030.

That on the 19th *day of* Dec. *19* 77 *at* 1 St Andrews Plaza
New York, N.Y.

deponent served the annexed [✓ Appendix] Brief *upon* Robert Fiske
U.S. Attorney-Southern Dist.

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this 19th
day of Dec. *19* 77

Reuben A. Shearer

Reuben A. Shearer

Robt. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979